

v.2 905

No. 14195

United States
Court of Appeals
For the Ninth Circuit.

ALEXANDER SWAN, 2d,

Appellant,

vs.

THE FIRST CHURCH OF CHRIST, SCIEN-
TIST, IN BOSTON, MASSACHUSETTS,
Also Known as the Church of Christ (Scientist),
a Corporation; THE CHRISTIAN SCIENCE
BOARD OF DIRECTORS, and the CHRIS-
TIAN SCIENCE PUBLISHING SOCIETY,
a Corporation,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division

FILED

APR 5 1954

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States, Southern
District of California, Central Division

No. 13517-C

ALEXANDER SWAN, II.,

Plaintiff,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST, Also Known as THE CHURCH OF CHRIST (Scientist), a Massachusetts Corporation; THE CHRISTIAN SCIENCE BOARD OF DIRECTORS, a Juridical Entity, Recognized and Regarded as Such Under the Laws of the Commonwealth of Massachusetts as a Body Corporate; THE CHRISTIAN SCIENCE PUBLISHING SOCIETY, a Massachusetts Corporation; DOES I to X; DOE CORPORATIONS I, II, III and IV; DOE ASSOCIATION, a Non-Profit Association,

Defendants.

FINDINGS OF FACTS AND ORDER RE
MOTION TO DISMISS AMENDED COMPLAINT OR IN LIEU THEREOF TO
QUASH SERVICE OF SUMMONS
THEREON

The matter of that certain motion to dismiss amended complaint or in lieu thereof to quash service of summons upon "The First Church of Christ, Scientist, also known as The Church of

Christ (Scientist)," and "Christian Science Publishing Society" as Massachusetts corporations, together with the affidavits in support thereof and the counteraffidavits and the reply affidavits in [2*] connection therewith, together with the written points and authorities and memorandum brief in support of said motion and the opposing points and authorities and memorandum brief, came on regularly to be heard and was heard in Court No. 3 of the above-entitled Court on December 22, 1952, before the Honorable James M. Carter, Judge presiding; The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious trusteeship or society, and The Christian Science Publishing Society, an unincorporated trusteeship, appearing specially by Lindstrom and Bartlett, by Ralph G. Lindstrom, Esq., on their behalf to present said motion, and Alexander Swan, 2d, appearing by Eugene L. Wolver, Esq., to oppose said motion; evidence having been presented by written affidavits in support of and also in opposition to said motion, and written points and authorities and memorandum briefs both in support of and in opposition to said motion, and oral argument fully presented on said matters, and the Court being fully advised in the premises, now makes and enters its Findings of Facts as follows:

(1) That defendant "The First Church of Christ, Scientist, also known as The Church of Christ (Scientist), a Massachusetts corporation,"

***Page numbering appearing at foot of page of original Reporter's Transcript of Record.**

was incorporated pursuant to the laws of the Commonwealth of Massachusetts under date of August 23, 1879, as "The Church of Christ (Scientist)." That on December 2, 1889, at a duly called and regularly held meeting of the members of said church corporation it was resolved by said members that said church corporation "be and is declared dissolved and that the present Clerk of the Church be hereby requested to take the steps necessary to give legal effect to this resolution * * *." That the said authorized final step to give full legal effect to said resolution does not appear to have been taken, but that said church corporation has been inactive ever since December 2, 1889, and therefore could not have done and has not done business in California since said date, and was not doing business in California at the time of the purported [3] substituted service upon it of Amended Complaint and alias summons thereon which was delivered to a Deputy Secretary of State of California on May 26, 1952, pursuant to Amended Order made by the above-entitled Court under date of April 28, 1952, upon ex parte application therefor.

(2) That defendant "The Christian Science Publishing Society, a Massachusetts corporation," was incorporated pursuant to the laws of the Commonwealth of Massachusetts under date of April 3, 1897. That on January 21, 1898, at a duly called and regularly conducted special meeting of the members of said corporation it was unanimously voted by said members that said corporation "be dissolved and the President, Edward P. Bates, is

Christ (Scientist),” and “Christian Science Publishing Society” as Massachusetts corporations, together with the affidavits in support thereof and the counteraffidavits and the reply affidavits in [2*] connection therewith, together with the written points and authorities and memorandum brief in support of said motion and the opposing points and authorities and memorandum brief, came on regularly to be heard and was heard in Court No. 3 of the above-entitled Court on December 22, 1952, before the Honorable James M. Carter, Judge presiding; The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious trusteeship or society, and The Christian Science Publishing Society, an unincorporated trusteeship, appearing specially by Lindstrom and Bartlett, by Ralph G. Lindstrom, Esq., on their behalf to present said motion, and Alexander Swan, 2d, appearing by Eugene L. Wolver, Esq., to oppose said motion; evidence having been presented by written affidavits in support of and also in opposition to said motion, and written points and authorities and memorandum briefs both in support of and in opposition to said motion, and oral argument fully presented on said matters, and the Court being fully advised in the premises, now makes and enters its Findings of Facts as follows:

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was incorporated pursuant to the laws of the Commonwealth of Massachusetts under date of August 23, 1879, as "The Church of Christ (Scientist)." That on December 2, 1889, at a duly called and regularly held meeting of the members of said church corporation it was resolved by said members that said church corporation "be and is declared dissolved and that the present Clerk of the Church be hereby requested to take the steps necessary to give legal effect to this resolution * * *." That the said authorized final step to give full legal effect to said resolution does not appear to have been taken, but that said church corporation has been inactive ever since December 2, 1889, and therefore could not have done and has not done business in California since said date, and was not doing business in California at the time of the purported [3] substituted service upon it of Amended Complaint and alias summons thereon which was delivered to a Deputy Secretary of State of California on May 26, 1952, pursuant to Amended Order made by the above-entitled Court under date of April 28, 1952, upon ex parte application therefor.

(2) That defendant "The Christian Science Publishing Society, a Massachusetts corporation," was incorporated pursuant to the laws of the Commonwealth of Massachusetts under date of April 3, 1897. That on January 21, 1898, at a duly called and regularly conducted special meeting of the members of said corporation it was unanimously voted by said members that said corporation "be dissolved and the President, Edward P. Bates, is

hereby authorized to do all things necessary, convenient and expedient to have the said Society legally dissolved and to take all the steps necessary to wind up its affairs." That said authorized final step to give full legal effect to said resolution does not appear to have been taken, but that said publishing corporation has been inactive ever since January 21, 1898, and therefore could not have done and has not done business in California since said date, and was not doing business in California at the time of the purported substituted service upon it of Amended Complaint and alias summons thereon which was delivered to a Deputy Secretary of State of California on May 26, 1952, pursuant to Amended Order made by the above-entitled Court under date of April 28, 1952, upon ex parte application therefor.

(3) That copy of said Amended Complaint and alias summons thereon was forwarded by the said Secretary of State of California to "The First Church of Christ, Scientist, in Boston, Massachusetts," an unincorporated religious trusteeship or society, and to "The Christian Science Publishing Society," an unincorporated trusteeship, and each has a sufficient interest to appear and present this matter on the motion to quash service herein because of the connection of said old inactive corporation with their historical origin. [4]

(4) That said unincorporated religious trusteeship or society as it exists under the laws of Massachusetts is not the successor of said church corporation so incorporated August 23, 1879, and

that said unincorporated religious trusteeship or society has been neither named as a party defendant nor served with process herein.

(5) That said unincorporated publishing trusteeship is not the successor of said publishing corporation so incorporated April 31, 1897, and that said unincorporated publishing trusteeship has been neither named as a party defendant nor served with process herein.

Therefore, It Is Hereby Ordered and Adjudged:

(1) That said motion to dismiss the Amended Complaint is denied without prejudice to renewal thereof;

(2) That said motion to quash service of alias summons on said Amended Complaint upon the said named defendant "The First Church of Christ, Scientist, also known as The Church of Christ (Scientist), a Massachusetts corporation," and upon the said named defendant "The Christian Science Publishing Society, a Massachusetts corporation," and the returns thereof should be and is hereby granted as to each of said named corporations; and aforesaid service and returns thereof are quashed and for naught held;

(3) That there has been no service upon any other person or entity.

Feb. 9, 1953.

/s/ JAMES M. CARTER,

Judge, U. S. District Court.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 9, 1953. [5]

In the District Court of the United States, Southern
District of California, Central Division

No. 13,517-C

ALEXANDER SWAN, II,

Plaintiff,

vs.

THE FIRST CHURCH OF CHRIST, SCIEN-
TIST, in Boston, Massachusetts, Also Known
as THE CHURCH OF CHRIST (Scientist),
a Juridicial Entity, Recognized and Regarded
as Such, and as a Body Corporate, Under the
Laws of the Commonwealth of Massachusetts;
THE CHRISTIAN SCIENCE BOARD OF
DIRECTORS, a Juridicial Entity, Recognized
and Regarded as Such, and as a Body Corpo-
rate, Under the Laws of the Commonwealth of
Massachusetts; THE CHRISTIAN SCIENCE
PUBLISHING SOCIETY, a Juridicial Entity,
Recognized and Regarded as Such, and as a
Body Corporate, Under the Laws of the Com-
monwealth of Massachusetts; DOES I to X;
DOE CORPORATIONS I, II, III and IV;
DOE ASSOCIATION, a Non-Profit Associa-
tion,

Defendants.

SECOND AMENDED COMPLAINT
EQUITABLE RELIEF AND DAMAGES

To the Honorable Judges of the Above-Entitled
Court:

The Petition of Alexander Swan, 2d, respectfully shows: [7]

For a First Cause of Action

I.

That the plaintiff, Alexander Swan, 2d, is and at all times herein mentioned, has been a resident of and domiciled in the State of California; that the defendants and each of them, excepting only the corporate defendants, are now and at all times herein mentioned, have been and are residents of and domiciled in the State of Massachusetts.

II.

That the defendants, Does I to X, Doe Corporations I, II, III and IV, Doe Association, are sued herein under fictitious names by reason of the fact that their true names are unknown to plaintiff at this time but that leave of court is hereby asked to amend this complaint when the same are ascertained by plaintiff.

III.

That at all times mentioned herein, the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, was and now is also known as The Church of Christ (Scientist) and that at all times mentioned herein, said defendant was and now is a juridical entity, duly organized, existing, recognized and regarded as a body corporate under and by virtue of the laws of the Commonwealth of Massachusetts.

IV.

That at all times mentioned herein, the defendant,

The Christian Science Publishing Society, was and now is a juridical entity duly organized, existing, recognized and regarded as a body corporate under and by virtue of the laws of the Commonwealth of Massachusetts.

V.

That at all times mentioned herein, the defendant, The Christian Science Board of Directors, was and now is a juridical entity, duly organized, existing, recognized and regarded as a body corporate under and by virtue of the laws of the Commonwealth of Massachusetts.

VI.

That at all times mentioned herein, the defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, and The Christian [8] Science Publishing Society, were and now are under the management, domination and control of the defendant, The Christian Science Board of Directors, and that said Board of Directors, including its present personnel or their predecessors have, at all times mentioned, exercised complete supervision, domination and control of the business policies, affairs and spiritual aspects of said defendants.

VII.

That at all times mentioned herein, the functions, intentments and purposes for which the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, was organized, continued, maintained and is now being continued and maintained, is for the fostering, maintaining, controlling and

promoting of the teaching, practicing and dissemination of that religion and science known and designated as Christian Science; a religion and science predicated upon the Bible and founded and organized by Mary Baker Eddy; that in order to do the foregoing, it is necessary to assist in the establishment of churches, maintain and supervise their religious and service rituals; assist in the financing of such churches and thereafter supervise and discipline such churches; that such churches are established, maintained, assisted in financing, supervised and disciplined throughout the world, and particularly in the United States of America, including the State of California.

VIII.

That at all times mentioned herein, the defendant, The Christian Science Publishing Society, had and now has the function, duty and purpose of selecting, approving, editing, printing and publishing of The Christian Science Quarterly, which is the Mandatory guide for the conduct of Christian Science services in said churches and contain and supervise the subject matter, comprising identical services held in such churches at given periods of time; that said defendant had and now has the additional purpose, duty and function of selecting, approving, editing and in many cases, printing and publishing books, magazines, [9] booklets, pamphlets, pictures, cards, records, instruments, documents and writings, comprising the prescribed written material that may be read, borrowed or

purchased in reading rooms maintained by said Christian Science Churches or in said churches on designated dates. That said reading rooms purchase all of their reading materials, of all types and descriptions, exclusively from said defendant, The Christian Science Publishing Society. That at all times mentioned herein, said defendant, The Christian Science Publishing Society, also prints and publishes The Christian Science Monitor, a daily newspaper of national and international circulation, having a large and extensive public circulation in the State of California; that said newspaper maintains offices for the obtaining of news, obtaining of subscriptions and advertising matter and for its distribution, two of such offices being in the State of California; that said newspaper maintains a specific portion, pages and part thereof for California advertising; that said defendant also directly solicits, sells and receives subscriptions to its periodicals, magazines, books, booklets, pamphlets, pictures, cards, records and writings; that all of the foregoing written and printed matter is continuously and regularly sold and distributed in the State of California and is continuously forwarded, transported and shipped by said defendant into said State of California, for the purpose of completing such sales and distribution.

LX.

That at all times mentioned herein, the defendant, The Christian Science Publishing Society, has and now prints and publishes The Christian Science

Journal, which is a monthly magazine containing the only published list of registered, authorized and approved Christian Science Practitioners, Christian Science teachers, Christian Science nurses and Christian Science churches and societies throughout the world, the United States and particularly in the State of California; that said list is the only list officially recognized by the defendants herein as being a list of persons authorized to practice the aforescribed [10] sciences or callings or of such churches or societies. That one of the functions, purposes and objects for which said Christian Science Journal is published, printed and distributed monthly, is to publicize and contain the advertising cards of Christian Science Churches, Christian Science teachers, Christian Science nurses and the officially recognized list of the names, addresses and telephone numbers of approved, authorized and registered Christian Science Practitioners and that the same furnishes the only available and ready list or reference of the names, addresses and telephone numbers of persons engaged in the science and calling of a Christian Science Practitioner.

X.

That at all times mentioned herein, the defendants have established and now maintain and establish, a procedure by which members of the Christian Science faith desiring to do so, may become approved, authorized and registered Christian Science Practitioners.

XI.

That at all times mentioned herein, the profession and calling of an approved, authorized and registered Christian Science Practitioner was and now is obtainable by a member of the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, who has successfully pursued, completed and concluded the classes and courses of study and preparation, prescribed by the defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, and The Christian Science Board of Directors and who has submitted satisfactory testimony and proof to said defendant, The Christian Science Board of Directors, that such member has completed said prescribed classes, study and preparation and is otherwise qualified as an approved, authorized and registered practitioner of Christian Science, pursuant to the Church Manual and By-laws of said defendant, The First Church of Christ, Scientist, in Boston, Massachusetts.

XII.

That at all times mentioned herein, only those whose names [11] appear or appeared in the Christian Science Journal as approved, authorized and registered as Christian Science Practitioners, have been and now are recognized by the public generally, and particularly by members of the Christian Science faith, as authorized Christian Science Practitioners, whose services are endorsed by the Christian Science Church, to the public and all members of the Christian Science faith as being

qualified to perform metaphysical treatment and healing of all ailments, injuries and disease and the amelioration of personal difficulties and problems, in the manner established, prescribed and followed by the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, and by the Christian Science faith; that only an approved, authorized and registered practitioner was or is subject or entitled to all of the benefits and recognition accruing to metaphysical practices under the various statutes, law or ordinances pertaining thereto and enacted by the United States, the several states and particularly the State of California; that such Christian Science Practitioner was and is required by the terms, regulations and provisions set forth in said Church Manual and Bylaws to devote substantially, all of his time, effort, energy and talent to the practice of Christian Science and, in effect, make it his means of livelihood; that in accordance with the usual custom of such Christian Science Practitioners in the world, the United States and particularly the State of California, a fee is charged for the services performed by him which fee is generally equal to that charged by the average reputable physician in the specific community or locality wherein each respective practitioner practices.

XIII.

That at all times mentioned herein, the Church Manual, more fully described as the "Manual of the Mother Church—The First Church of Christ, Scientist, in Boston, Massachusetts—Mary Baker

Eddy” has been and now is the official Bylaws of said defendants, The First Church of Christ, Scientist, in Boston, Massachusetts; The Christian Science Board of Directors and The Christian Science Publishing Society; [12] that annexed hereto and designated Exhibit “A” and by reference thereto is made a part hereof as if inserted herein in full, are the provisions and paragraphs of said Church Manual that deal with Christian Science Practitioners, the disciplining or expulsion of a Christian Scientist from the Church or for the alleged offense of misteaching of Christian Science; that the foregoing constitutes the sole and only provisions of said Bylaws that deal with the disciplining or expulsion of members of the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, or of the Christian Science Practitioners belonging thereto.

XIV.

That on or about the 5th day of March, 1930, the plaintiff applied for membership in the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, and that on or about the 30th day of April, 1930, plaintiff was admitted as a member in good standing of said defendant and ever since said date, has been and now is a member of said defendant, The First Church of Christ, Scientist, in Boston, Massachusetts; that during the whole of said period, plaintiff has been a good and faithful Christian Scientist and has fully complied with all

the tenets of said faith and has performed various functions in the Christian Science branch church to which he belonged, including the offices of a directors and first reader, and as such, has participated in, directed and conducted the religious services of said branch church, which branch church is a recognized branch church of the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts.

XV.

That thereafter, and prior to on or about the 15th day of September, 1934, plaintiff pursued, completed and concluded the classes and courses of study and preparation prescribed by the defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, and The Christian Science Board of Directors, and in addition thereto, submitted to defendants, testimony and proof that he had completed said prescribed [13] courses, classes, study and preparation and was otherwise qualified as an approved, authorized and registered practitioner of Christian Science, pursuant to the Church Manual and Bylaws; that on or about the 15th day of September, 1934, plaintiff was approved and accepted by the defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, and The Christian Science Board of Directors as an approved, authorized and registered Christian Science Practitioner and thereafter, his name was published and printed under the authority and approval of said defendants in the monthly editions of the said Christian Science Journal, under the title and

caption of "Christian Science Practitioners and Teachers" and his name, address and telephone number was inserted thereunder; that the publication of plaintiff's said name, address and telephone number as aforesaid, continued without exception or interruption from and after said 15th day of September, 1934, until on or about the 17th day of October, 1949, and that during the whole of said period, the defendants herein did render to and charge plaintiff the prescribed annual fee and charges for the insertion and listing of plaintiff's name, address and telephone number under said classified caption as aforesaid, and that plaintiff did pay and has paid to defendants all of said charges, all of which payments were accepted, retained and kept by said defendants.

XVI.

That during the whole of the aforesaid period, plaintiff continuously held himself forth to the public and to those members thereof desiring his profession and calling as a Christian Science Practitioner and actively practiced said profession and calling and that the same was his only means of livelihood and support; and that during the whole of said period, plaintiff, by his untiring effort and loyalty toward the Christian Science faith, and by reason of the sincerity with which he practiced the same, built up a national reputation as a Christian Science Healer and Practitioner and kept and maintained offices at all times in a first-class office building, which said office was equipped [14] with authorized Christian Science books and literature

and necessary and proper furniture and furnishings; two telephone lines and the other prerequisites of a Christian Science Practitioner's office and during the whole of said period, plaintiff conducted himself as a Christian Science Practitioner with dignity, respect and in an ethical manner.

XVII.

That on or about the 12th day of September, 1949, plaintiff voluntarily requested the defendants to remove his name temporarily from said list of approved, authorized and registered Christian Science Practitioners; that said request was made to enable plaintiff to pursue and engage in further study and research in the field of Christian Science and that thereafter, plaintiff did engage and pursue study and research in said field and did further engage in expository writing pertaining to metaphysics, all of which were done between, on or about said 12th day of September, 1949, and on or about the 10th day of May, 1951.

XVIII.

That plaintiff having completed his further study and research and his said expository writing on or before the said 10th day of May, 1951, and thereafter desiring to again devote all of his time, effort, energy and talent to the practice of Christian Science and thereafter again make it the means of his livelihood and in accordance with the rules and regulations of said Church Manual and Bylaws (on

or about said 10th day of May, 1951), plaintiff made written application to the defendants for the resumption of the publication and reinsertion of his name, address and telephone number in the ensuing issues of the Christian Science Journal under the officially recognized list of "Christian Science Practitioners and Teachers."

XIX.

That continuously, from and after said 10th day of May, 1951, and in absolute disregard of the continued requests of the plaintiff to do so, defendants have failed to resume the publication and reinsertion [15] of plaintiff's name, address and telephone number in any or all of the subsequent copies of said Christian Science Journal and now continue to fail and refuse to resume such publication or reinsertion of plaintiff's name. That such failure and refusal on the part of the defendants is without just provocation or lawful reason and that no charges, accusations or other form of indictment has ever been brought against or concerning plaintiff nor has he otherwise been, by any means, deprived of his right to resume practice as a Christian Science Practitioner and that he has at all times mentioned herein, fully, lawfully, adequately and properly qualified to follow and resume his said profession and calling as a Christian Science Practitioner but that he has been unable to do so by reason of the aforesaid failure and refusal on the part of the defendants; that plaintiff, since said 10th day of May, 1951, has been unable to and now

is unable to continue or resume his said profession and calling as an approved, authorized and registered Christian Science Practitioner by reason of the aforesaid failure and refusal on the part of said defendants.

XX.

That by reason of said failure and refusal on the part of said defendants, plaintiff, since on or about said 10th day of May, 1951, has been and now continues to be deprived of his qualified and usual means and methods of livelihood and of his income and status of a Christian Science Practitioner with all of the benefits, recognition and status to which an approved, authorized and registered Christian Science Practitioner is entitled; that in addition thereto, the reputation and prestige of plaintiff as a Christian Scientist and his character and standing as a member of the Christian Science Church has been damaged, jeopardized, diminished and injured and that as the proximate result thereof, he is no longer able to attend church services or fraternize with old friends of the Christian Science faith and has thereby suffered and is suffering deep and grievous humiliation, embarrassment and [16] annoyance.

XXI.

That plaintiff has exhausted all means available to him under the Church Manual, Bylaws or established Church procedure of the defendants for the restoration, resumption and reinsertion of his name, address and telephone number in said Christian Science Journal and that plaintiff is now without

any further means, remedy or redress within the organization of any of the defendants to obtain, accomplish or acquire the said restoration, resumption and reinsertion of his name, address and telephone number in said Christian Science Journal; that plaintiff has heretofore performed all acts and things required of him by the defendants and each of them and that plaintiff is without any speedy or adequate remedy at law.

XXII.

That heretofore, many of the approved, authorized and registered Christian Science Practitioners have voluntarily caused their names, addresses and telephone numbers to be removed from said Christian Science Journal for varied periods of time during which period, they have been on Sabbatical leave, engaged in other pursuits, performed other duties for the Christian Science Church or for other reasons at this time unknown to plaintiff, they did not follow the profession of a Christian Science Practitioner for varied periods of time; that plaintiff is informed and believes and upon information and belief alleges that as to such persons upon their desiring to resume the practice of a Christian Science Practitioner, upon making their request therefore to the defendants, their names, addresses and telephone numbers were republished and reinserted thereafter in the Christian Science Journal; that plaintiff is informed and believes and upon information and belief alleges that the foregoing is a custom established and followed by the defendants.

XXIII.

That at all times mentioned herein, only approved, authorized and registered Christian Science Practitioners who are listed in said [17] Christian Science Journal have been and are recognized and enjoy the rights, privileges and license to act before or be recognized by various administrators, bureaus or officials of the Federal, State and Municipal Governments or receive the recognition and acceptance afforded expert witnesses by the various courts, both Federal, State and Municipal, or be protected by law from divulging information received in a professional capacity or be accepted as an expert or person of professional standing by public institutions, schools, hospitals or welfare institutions or by the defendants or the various branch Christian Science Churches for the performance of such functions or the making of such certifications as are usually done or required to be done by Christian Science Practitioners, all of which matters are necessary, requisite and essential to the practice of a Christian Science Practitioner or the obtaining or realization of an adequate livelihood from such practice.

XXIV.

That any attempted resumption by plaintiff of his said profession and calling as a Christian Science Practitioner would be handicapped and prevented by his name, address and telephone number not appearing in said Christian Science Journal, since he would not, by reason thereof, be able,

among other privileges, to obtain the services of a Christian Science Nurse for his patients or place or attend his patients in Christian Science Institutions or share an office or practice with an approved, authorized and registered Christian Science Practitioner, or receive State and Federal recognition, and sundry other important privileges as are accorded by the defendants and branch churches and members of the Christian Science faith to those Christian Science Practitioners listed in the Christian Science Journal, and further, persons desiring the service of a Christian Science Practitioner consults such Christian Science Journal to ascertain if the desired practitioner is approved, authorized and registered as a Christian Science Practitioner and the absence of plaintiff's name, address and [18] telephone number from said Christian Science Journal would indicate the negative thereof and that such condition is true as to former patients of plaintiff and other Christian Science Practitioners with whom he formerly had a fine and good reputation and prestige.

XXV.

That all of the aforescribed injuries and damage to plaintiff are continuing in nature and will hereafter continue and cause plaintiff further, other and additional damage until and unless plaintiff's name, address and telephone number is restored and again published and reinserted in the successive publications of said Christian Science Journal; that the amount and extent of such damage is difficult to ascertain and that damages alone are insufficient

to compensate plaintiff for being deprived of and unable to follow his usual profession and calling and make a living therefrom.

XXVI.

That all of the foregoing are to plaintiff's damage in the sum of One Hundred Thousand (\$100,000.00) Dollars.

For a Second Cause of Action

I.

Plaintiff herein realleges paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV and XXV of his First Cause of Action and by reference thereto makes the same a part hereof as if inserted herein in full.

II.

That between said 15th day of September, 1934, and said 17th day of October, 1949, plaintiff, by his learning, skill, sincerity and energy, developed, obtained, possessed and enjoyed a lucrative, profitable and ethical professional practice as an approved, authorized and registered Christian Science Practitioner; that he enjoyed a reputation as a conscientious, successful and desirable Christian Science Practitioner, [19] maintained offices in the Hollywood area of the County of Los Angeles, State of California, and developed and established a clientele, both from said County and nationwide and was called upon as such Christian Science Practitioner to conduct funeral services, attend

patients in hospitals, administer to patients at home, give moral and spiritual help and assistance to individuals confined in penal institutions, Government institutions, public institutions, soldiers' homes and quarters, adjust domestic relations, give metaphysical and Christian Science direction to fellow metaphysicians and fellow Christian Science Practitioners and in general, minister to the public in times of emergency, stress, need or desire.

III.

That during the aforesaid period, plaintiff conducted metaphysical research and study and wrote metaphysical articles accepted for public publishing; that for the period commencing on or about said 17th day of October, 1949, and on or about the 10th day of May, 1951, plaintiff studied, researched, meditated and made himself more proficient in metaphysics and Christian Science and more skillful and adept to thereafter practice the profession and calling of an approved, authorized and registered Christian Science Practitioner.

IV.

That prior to said 17th day of October, 1949, plaintiff realized and obtained from the practice of his said profession and calling, the annual sum of \$15,000.00; that plaintiff is informed and believes and upon information and belief alleges that by reason of his increased skill, knowledge and proficiency, had he been able to resume his said profession and calling, subsequent to the said 10th day

of May, 1951, he would have realized therefrom, the annual sum of \$25,000.00 and that by reason thereof, plaintiff has been heretofore damaged and will hereafter be damaged in the annual sum of \$25,000.00 or a pro rata thereof for the period that plaintiff is unable to resume or continue his said profession and calling. [20]

For a Third Cause of Action

I.

Plaintiff herein realleges paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV and XXV of his First Cause of Action and paragraphs II and III of his Second Cause of Action and by reference thereto makes the same a part hereof as if inserted herein in full.

II.

That during said period, commencing on or about the 17th day of October, 1949, and terminating on or about the 10th day of May, 1951, and in conjunction with his study and research during such period, plaintiff wrote and caused to be published, a book entitled, "God on Main Street."

III.

That in the composition and publication of said book, plaintiff steadfastly and zealously followed the precepts of the Bible and the teachings of Mary Baker Eddy contained in the Christian Science textbook, "Science and Health With Key to the Scrip-

tures'' and in her other recognized writings and her expressed expectation and permission for students of Christian Science to so write on the subject of Christian Science; and plaintiff was impelled and motivated in the writing of his book to serve and advance the cause of Christian Science in the accomplishment of the following aims and purposes:

(a) To present to that large majority of plaintiff's fellow Americans firstly, and a large majority of all humanity secondly, who have been and are prejudiced against Christian Science, in a manner that would be entertaining, appealing, understandable and readily acceptable, the teachings, precepts, purposes and blessings of Christian Science and the ministry of Jesus Christ.

(b) To present religion in a practical and understandable way in order to reach the substantial portion of our population who are Church Members but who may be sporadic Church attendants. [21]

(c) To present the principle of Christian Science to the clergy of all faiths so that they may fulfill completely, the demands of Jesus and reiterated by Mary Baker Eddy to not only preach and teach but to exemplify the healing Christ-spirit that will change their congregations' poverty into plenty, their despondency into joyousness, their sickness into health and their faith into fact.

(d) To present the principles of Christian Science to the medical profession as the bridge between science, theology, medicine and man.

IV.

That on or about the 21st day of July, 1950, plaintiff completed his manuscript of said book and on or about said date, advised the defendants of the existence of such manuscript and offered and tendered to said defendants, a copy of such manuscript for the purpose that they might examine the same; that continuously thereafter, the defendants and each of them, refused, failed and neglected to receive, accept or examine such manuscript or any part thereof, nor did said defendants or any of them communicate with or advise plaintiff of any desire on their part in regard to or concerning said book or the publication thereof.

V.

That after the lapse of several months, plaintiff caused said book to be printed and published and that during the month of February, 1951, he caused said book to be copyrighted and that during said month, he caused a copy of said book to be sent and transmitted to the defendants.

VI.

That plaintiff is informed and believes and upon information and belief alleges that commencing prior to the 10th day of May, 1951, and continuously thereafter, the defendants and each of them, unlawfully, maliciously, deliberately, wilfully and with cause, conspired amongst themselves and each other, to hinder, delay and deny circulation [22] of said book, "God on Main Street" amongst the members of the Christian Science faith and among members

of the public generally and that during the whole of said period, said defendants have and continue, to, by means of such conspiracy, hinder, delay and deny such circulation of such book and its message to its members of the Christian Science faith and to the public generally, and have impugned and villified to the members of the Christian Science faith and to the public generally, the character, motives, ethical and professional standing of plaintiff in a manner calculated and intended to injure, diminish, harm and destroy the value and status of such book, both as a property and as a religious treatise and all of the gains, profits and benefits that might be thereafter received, had or obtained by plaintiff by reason thereof.

VII.

That at all times mentioned herein, the defendants were the vendors, sellers and distributors of literature, written reading matter and books to its various branch churches, the reading rooms thereof and various book stores and vendors of literature, written reading matter and books; plaintiff is informed and believes and upon information and belief alleges that said defendants informed and notified or caused to be notified or informed, said branch churches, reading rooms, book stores and sellers of literature, written reading matter and books; that they should not thereafter exhibit, purchase, acquire, sell or distribute plaintiff's said book, "God on Main Street" and that said defendants informed or caused said churches, reading rooms and sellers of

literature, written reading matter and books that their purchase, sale or distribution of said book would cause the displeasure of defendants and that defendants would thereafter fail, refuse and neglect to subsequently furnish them with its literature, written reading matter and books upon which said branch churches, reading rooms, book stores and sellers of literature, written reading matter and books were dependent and which were requisite to the maintaining of their establishments; plaintiff is further informed and believes and upon information [23] and belief alleges that at said time, said defendants informed or caused to be informed, said branch churches, reading rooms, book stores and sellers of literature, written reading matter and books, that plaintiff was not an approved, authorized and registered Christian Science Practitioner; that he theretofore had been but was no longer such an approved, authorized and registered Christian Science Practitioner.

VIII.

That in furtherance of said conspiracy, the defendants and each of them, at a time or times, place or places, at this time unknown to plaintiff, refused and caused to be refused, lawful advertising matter theretofore tendered and being tendered to the Christian Science Monitor, an international newspaper of general circulation and published by the defendants, which advertising matter was concerning and in furtherance of the sale and distribution of said book, "God on Main Street"; that plaintiff is informed and believes and upon information and

belief alleges that the failure and refusal of the defendants to reinsert and republish his name, address and telephone number in said Christian Science Journal, as hereinbefore more fully alleged, was by reason of and in furtherance of said conspiracy.

IX.

That all of the aforescribed acts on the part of the defendants were without cause, justification or provocation and were arbitrary, unwarranted, willful and malicious.

X.

That plaintiff's said book, "God on Main Street" is an explanation and dissertation of, on and concerning the beliefs and teachings of Christian Science and that said book's acceptance by the public in general and members of the Christian Science faith is dependent upon the status and position of plaintiff as an approved, authorized and registered Christian Science Practitioner.

XI.

That by reason of the foregoing, the sales and public [24] returns of plaintiff's said book have been diminished, lessened, hampered and decreased, all to plaintiff's damage in the sum of \$100,000.00.

XII.

That all of the aforesaid acts on the part of the defendants were done for the purpose of oppressing plaintiff and were actuated by malice on the part of the defendants, by reason of which, plaintiff

is entitled to exemplary damages in the sum of \$50,000.00.

Wherefore: Plaintiff prays:

1. That the defendants and each of them be required by an order of this court requiring that they forthwith cause to be reinserted and republished, the name, address and telephone number of plaintiff as an approved, authorized and registered Christian Science Practitioner in the Christian Science Journal and that the same be not removed therefrom and hereafter, except for cause or provocation.

2. That plaintiff recover damages from the defendants in accordance with his First Cause of Action in the sum of \$100,000.00.

3. That plaintiff recover damages from the defendants in accordance with his Second Cause of Action in the sum of \$25,000.00 per annum.

4. That plaintiff recover damages from the defendants in accordance with his Third Cause of Action in the sum of \$100,000.00, together with punitive damages in the further and additional sum of \$50,000.00.

5. For plaintiff's costs and disbursements necessarily incurred herein.

6. For such other and further relief as to the court may seem meet and just.

/s/ EUGENE L. WOLVER,

Attorney for Plaintiff. [25]

EXHIBIT A

Paragraphs and Provisions Dealing With
Christian Science Practitioners
(From Church Manual)

Article VIII.

Use of Initials "C.S."

Section 21. A member of the Mother Church shall not place the initials "C.S." after his name on circulars, cards, or leaflets, which advertise his business or profession, except as a Christian Science practitioner.

Practitioners and Patients

Section 22. Members of this Church shall hold in sacred confidence all private communications made to them by their patients; also such information as may come to them by reason of their relation of practitioner to patient. A failure to do this shall subject the offender to Church discipline.

Article XI.

Departure from Tenets

Section 1. If a member of this Church shall depart from the Tenets and be found having the name without the life of a Christian Scientist, and another member in good standing shall from Christian motives make this evident, a meeting of the Board of Directors shall be called, and the offender's case shall be tried and said member exonerated, put on probation, or excommunicated.

Violation of Bylaws

Section 2. A member who is found violating any of the Bylaws or Rules herein set forth, shall be admonished in consonance with the Scriptural demand in Matthew 18:15-17; and if he neglect to accept such admonition, he shall be placed on probation, or if he repeat the offense, his name shall be dropped from the roll of Church membership.

Preliminary Requirement

Section 4. No Church discipline shall ensue until the requirements according to the Scriptures, in Matthew 18:15-17, have been strictly obeyed, unless a Bylaw governing the case provides for immediate action.

Authority

Section 5. The Christian Science Board of Directors has power to discipline, place on probation, remove from membership, or to excommunicate members of The Mother Church. Only the members of this Board shall be present at meetings for the examination of complaints against Church members; and they alone shall vote on cases involving The Mother Church discipline.

Article XII.

Misteaching

Section 2. If a member of this Church is found trying to practice or to teach Christian Science contrary to the statement thereof in its textbook, Sci-

ence and Health With Key to the Scriptures, it shall be the duty of the Board of Directors to admonish that member according to Article XI, Sect. 4. Then, if said member persists in this offense, his or her name shall be dropped from the roll of this Church.

Duly verified.

[Endorsed]: Filed February 18, 1953. [26]

[Title of District Court and Cause.]

NOTICE OF MOTIONS TO DISMISS SECOND
AMENDED COMPLAINT, OR IN LIEU
THEREOF TO QUASH SERVICE OF
PROCESS THEREUPON

To: Alexander Swan, 2d, above-named plaintiff, and
Eugene L. Wolver, Esq., his attorney:

Please Take Notice That (1) The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious trusteeship or society, purportedly sued and served erroneously herein as "The First Church of Christ, Scientist, in Boston, Massachusetts, [59] also known as The Church of Christ (Scientist), a juridical entity recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts"; (2) Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, a self-perpetuating group of individuals

who are the trustees for said religious trusteeship or society, purportedly sued and served erroneously herein as "The Christian Science Board of Directors, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts"; and (3) The Christian Science Publishing Society, a trusteeship, purportedly sued and served erroneously herein as "The Christian Science Publishing Society, a juridical entity recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts," by their undersigned counsel, will each appear specially for the purpose of these motions, and, as to each so specially appearing, will move the above-entitled Court in the Courtroom of Honorable James M. Carter, U.S. District Judge, Courtroom No. 3, Second Floor, U.S. Post Office and Court House Building, 312 North Spring Street, Los Angeles, on Monday, the 29th day of June, 1953, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard, pursuant to Rule 12(b) (1), (2), (4), (5) and (6) as follows:

1. To dismiss this action as to each defendant on the ground that the Court is without jurisdiction because of failure of plaintiff to show diversity of citizenship within the meaning of U.S. Constitution, Article III, section 2, paragraph 1, and within the meaning of the Judiciary Code, 28 U.S.C.A., section 1332 (a) (1).

2. To dismiss the action for lack of jurisdiction over the person of said named parties defendant,

and each of them, (a) on the ground that none of them is a legal entity with capacity to be sued in California on the purported cause of action alleged in plaintiff's complaint, and (b) on the further ground, that none of [60] said parties defendant is amenable to service of process within the State of California.

3. To quash service of process upon said defendants, and each of them, upon the grounds that said process is insufficient and that said purported substituted service of process is neither authorized nor valid in the type of action purportedly alleged against any of said defendants.

Said three motions above will be based upon the records, papers and files herein, particularly the following affidavits:

(a) Affidavit of Leonard T. Carney, filed November 20, 1951;

(b) Affidavit of Kimmis Hendrick, filed November 20, 1951;

(c) Affidavit of Elizabeth McArthur Thomson, filed August 8, 1952;

(d) Affidavit of Gordon V. Comer, filed August 8, 1952;

(e) Affidavit of George Wendell Adams, filed November 6, 1952;

(f) Affidavit of Elizabeth McArthur Thomson, filed November 6, 1952;

(g) Affidavit of Hazel A. Firth, filed November 6, 1952;

(h) Affidavit of Gordon V. Comer, filed November 6, 1952;

(i) Affidavit of Arthur W. Eckman, filed November 6, 1952;

together with the following affidavits filed and served concurrently herewith:

(a) Affidavit of Clayton B. Craig;

(b) Affidavit of John H. Hoagland;

(c) Affidavit of Walter A. Dane;

(d) Affidavit of Arthur W. Eckman;

together with Memorandum of Points and Authorities filed and served concurrently herewith. [61]

4. To dismiss the Second Amended Complaint, and each alleged count thereof separately, against said parties defendant on the ground that the Court lacks jurisdiction over the subject matter alleged in each of said counts, and further that each count fails to state a claim upon which relief can be granted.

Said fourth motion will be based upon the Memorandum of Points and Authorities served and filed concurrently herewith, and upon the records, papers and files herein.

Dated: June 10, 1953.

LINDSTROM AND
BARTLETT,

By /s/ RALPH G. LINDSTROM,
Attorneys for The Mother Church, The First
Church of Christ, Scientist, in Boston, Massa-
chusetts; The Christian Science Board of Di-
rectors of said Church; and The Christian
Science Publishing Society.

Affidavit of Service attached.

[Endorsed]: Filed June 11, 1953. [62]

[Title of District Court and Cause.]

AFFIDAVIT OF WALTER A. DANE

Commonwealth of Massachusetts,
County of Suffolk—ss.

Walter A. Dane, of lawful age, being first duly
sworn, deposes and says:

That in 1912 he was duly admitted to practice law
before the Courts of the Commonwealth of Massa-
chusetts and in 1915 before the Federal Courts [64]
in said Commonwealth and is an active member of
the Bar of the Commonwealth of Massachusetts,
practicing before all of the courts of said Common-
wealth and before the Federal Courts, including the
Supreme Court of the United States.

That affiant has represented The Christian Science
Board of Directors of The Mother Church, The
First Church of Christ, Scientist, in Boston, Massa-
chusetts, as well as the trustees of The Christian
Science Publishing Society, in litigation before the

highest judicial courts of the Commonwealth of Massachusetts, and he is familiar with the historical origin and organization of their religious activities.

That affiant represented the Trustee-Directors as parties defendant in *Dittemore vs. Dickey, et al.*, 1924, 249 Mass. 95, and in *Eustace vs. Dickey, et al.*, 1921, 240 Mass. 55, wherein the then Chief Justice of the Supreme Judicial Court of Massachusetts construed the founding Deed of Trust dated September 1, 1892, by Mary Baker Eddy to Ira O. Knapp, et al., as establishing a self-perpetuating group of trustees now known as The Christian Science Board of Directors of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, for administering the ecclesiastical organization and affairs of said Church; that said Court further construed the founding Deed of Trust dated September 25, 1898, by Mary Baker Eddy to Edward P. Bates, et al., as establishing a religious trusteeship to conduct the business or activity known as The Christian Science Publishing Society for the actual and avowed purpose of "more effectually promoting and extending the religion of Christian Science," and said Court also held that said Church was the beneficiary of said publishing trust. The Supreme Judicial Court of Massachusetts stated at page 69 of the *Eustace* case:

"The master also has found that the church has never become incorporated but has continued from the first an unincorporated religious association."

That affiant has more recently represented the trustees of said The Christian Science Publishing Society in litigation before the said [65] Supreme Judicial Court of Massachusetts in *Assessors of Boston vs. Lamson, et al.*, 1944, 316 Mass. 166, wherein the said Court again affirmed that said publishing trusteeship operated and used its property for religious purposes, and that all of its general publications were religious publications, including The Christian Science Monitor, a daily newspaper of international circulation, in that the dominant purpose of the trustees in publishing said newspaper is "to serve the religious cause of Christian Science" and that it "is a missionary organ serving to carry the name and principles of Christian Science to all parts of the world and to cultivate good will for the Christian Science movement." That in said case it was held that the property of said publishing trusteeship was exempt from property taxes within the meaning of the statutory exemption which exempted principal or income of personal property owned by, or held in trust for, religious organizations if "used or appropriated for religious, benevolent, or charitable purposes."

That affiant further affirms that in his opinion said Trustees-Directors of said Church could not, at the time of said litigation, nor can either now, be sued under the laws of the Commonwealth of Massachusetts as a legal entity except in the limited field concerning vesting of rights in consequence of any gifts or grants made to them, for which purpose, and for which purpose alone, they are deemed a

body corporate or corporation under Chapter 68 of Massachusetts General Laws, Title XI, entitled "Certain Religious and Charitable Matters," which statutes are no part of the corporation laws of the Commonwealth of Massachusetts. Chapter 68, Section 1 of General Laws (formerly Pub. Stat., Ch. 39, Sec. 1) and Section 12 (formerly Stat. of 1811, Ch. 6, Sec. 3) have been the law of the Commonwealth without substantial change for more than 100 years.

The Supreme Judicial Court of Massachusetts, in *Silsby vs. Barlow*, 1860, 16 Gray (82 Mass.) 329, referred to the earlier statute now embodied in said Section 12 as follows:

"Originally all our religious societies were corporate [66] bodies. The towns at first exercised parochial powers, most of the people of this state being of one denomination. But as varieties of opinion sprang up, it became necessary to separate the parochial from the municipal business, and the parishes formed separate organizations. Other religious societies were incorporated by special acts; but many congregations remained unincorporated. Some persons had conscientious scruples against corporations, and others preferred to manage their religious affairs in a different way. The St. of 1811, c. 6, section 3, was enacted for the benefit of such persons. It enabled unincorporated religious societies to take and hold property, manage, use and employ the same, choose trustees, agents and officers therefor, and constituted them corporations so far as might be necessary."

The higher court also spoke of the statute preceding Section 12 as follows in *Glendale Union Christian Society v. Brown*, 1872, 109 Mass. 163, saying that "it originated in the fact that many persons entertained conscientious objections against corporations for religious purposes, as they existed * * * such societies need not adopt all the regulations that govern incorporated societies, and may take and hold property without it."

In *First Baptist Church of Sharon v. Harper*, 1906, 191 Mass. 196, 77 N.E. 778, the Supreme Judicial Court of Massachusetts says (page 206 of the Official reports) that, by the statutes which antedated Section 12 of said Chapter 68: "* * * an unincorporated religious society was enabled to acquire, use and enjoy property in the same manner as if duly incorporated * * *. The effect of these enactments is that for the purpose of taking, holding and transmitting property a voluntary religious society possessed all the qualifying attributes of a duly organized corporation."

As recently as 1951, the Supreme Judicial Court of Massachusetts [67] stated in *MacGregor vs. Comm. of Corp.*, 327 Mass. 484, 99 N.E. (2d) 468, 469-470:

"Voluntary associations were not regarded at common law as legal entities and so could not as such take title to real or personal property either for their own benefit or in trust for others * * * The gifts, however, would not fail for want of a trustee, and any technical

difficulty that might exist as to the legal title might easily be removed by the appointment of a trustee * * * Unincorporated religious societies have long enjoyed the power to acquire and dispose of property. G. L. (Ter. Ed.), c. 68, section 1."

That under and by virtue of said statutes, all of which stand unrepealed as of this date, and said decisions of the highest court of the Commonwealth of Massachusetts, none of which has been thereafter modified or overruled, it is the law of the Commonwealth of Massachusetts that:

(1) The Christian Science Board of Directors of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, is deemed a body corporate or corporation for the sole and only purpose of "taking and holding in succession all gifts, grants, bequests and devises of real or personal property" to them, or to their Church;

(2) In all and every other respect than specified in (1) hereinabove, said Trustee-Directors and said Church are respectively an unincorporated trusteeship and an unincorporated religious society; and

(3) Said The Christian Science Publishing Society is solely and wholly a trusteeship and not a body corporate or corporation for any purpose whatsoever.

/s/ WALTER A. DANE,

Affidavit of service attached.

[Endorsed]: Filed June 11, 1953. [68]

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN H. HOAGLAND

Commonwealth of Massachusetts,
County of Suffolk—ss.

John H. Hoagland, of lawful age, on his oath being first duly sworn, deposes and says:

That he is and at all times commencing and since 1944 has been, General Manager of The Christian Science Publishing Society, a trusteeship comprised of Elizabeth McArthur Thomson, [71] James G. Rowell and Leonard T. Carney, as Trustees thereof, under and pursuant to deed of trust by Mary Baker Eddy, Trustor, dated September 25, 1898; that as such, and under said Trustees, and through the various departments of said Publishing Society under his direction, he has general management of all affairs, transactions, customs, procedures and practices of said Publishing Society and has direct knowledge thereof;

That The Christian Science Monitor is one of the publications of said Publishing Society, being an international daily newspaper founded by Mary Baker Eddy who stated in her work The First Church of Christ, Scientist, and Miscellany, "The object of the Monitor is to injure no man, but to bless all mankind." That the purpose of said newspaper is part and parcel of the general evangelical purpose of The Christian Science Movement which is to heal mankind of sin, sickness, discord, disease and death, among men and in the business and

political community of the world, on a wholly spiritual basis, and to such ends, one of said Monitor purposes is to pioneer wholly constructive and healing purpose, in, and presentation of, the news of the world, and through the type of advertising carried in its columns; that said Monitor has on average operated at a cost greater than total receipts, for the primary reason that whenever its operation has shown greater receipts than costs, the area of its news gathering throughout the world has been enlarged and improved to the end of greater efficiency in its basic and general purpose of healing and spiritualization of thinking throughout the world. That The Christian Science Monitor, as such international daily newspaper has a world-wide corps of correspondents located in all the capitals and important news centers of the world. It also takes the full service of the Associated Press. Its policy and practice are against emphasis being laid upon matter involving crime, scandal and sensation, and in its editorial matter emphasis is laid upon its conception of moral issues [72] in favor of temperance, peace and social justice. Its foreign news is regarded generally as reliable and is customarily read by many who are not Christian Scientists as well as by those who are.

That The Christian Science Monitor is circulated in 120 different countries throughout the World, and carries a religious article daily based on the teachings of Christian Science and this article is translated into fifteen different languages, one trans-

lation of which appears in nearly every issue of The Monitor. These translations of the religious articles are designed to enable people of practically all nationalities in various parts of the World to read them; that no news service is sold by The Monitor.

That a system of leased wires, wireless service and telegraphic loops connects this paper's own distant news bureaus and special correspondents with the home office. Its news content is more than 65% of the whole paper, and is fundamental and educational in character. The Christian Science Monitor on religious grounds declines at least 50% of the advertising which the ordinary newspaper accepts. For example, The Monitor as a matter of policy does not accept advertising of the following commodities: liquor, tobacco, tea, coffee, medical, surgical or hygienic articles; food products, soaps or other commodities when advertised on a health basis; hotel, resort or travel advertising employing a health appeal; Sunday theatricals; complexion preparations claiming medicinal qualities; tombstones, cemeteries, dentists, oculists, collection agencies, oil or mining propositions, animals in captivity, illustrations or text representing life or health depending upon weather conditions; securities of promotional enterprises; investment of capital wanted; and illustrations showing use of tobacco or liquor.

Such advertising is considered by the Christian Science Board of Directors to be incompatible with the principles of Christian Science and with the

terms of the Trust Deed under which the paper is published. [73]

That in publication of said Monitor in Boston, said Publishing Society maintains a news bureau in Los Angeles, California, with another bureau in San Francisco; that said bureaus are wholly and solely news gatherers, and no attache or employee whomsoever within California does, or can do, more than submit to the editorial department in and at Boston, Massachusetts, proposed news items and articles, the use or rejection of which is wholly and solely determined at Boston, Massachusetts; that the book review editor of said Monitor is in and at Boston, Massachusetts, and the question of whether any given book shall be reviewed, and whether any proffered advertising of any book or commodity shall be accepted or rejected for and by said Monitor, is wholly and solely determined at Boston, Massachusetts.

That no department of said Publishing Society sells any of its publications or related evangelical material, including said Monitor (excepting only subscriptions received by mail and accepted at Boston for periodicals which are transmitted directly to subscribers by United States mail) at any point, in any manner or to any purchaser or subscriber within the State of California save and except to separately organized and independently existing branch churches (generally incorporated as religious corporations) and societies within California which are recognized as such independently existing and independently governed branch churches

and societies by The Mother Church; that none of the publications of said Publishing Society is published in California, but are all published at Boston, Massachusetts; that specifically also all editions of The Monitor, including the Pacific Coast Edition (so designated solely by news content emphasis) is edited and published in and mailed from, Boston, Massachusetts, and not elsewhere; that any sales of publications and related evangelical material of said Publishing Society within California are wholly and solely by said branch churches and societies and the reading rooms maintained by said [74] branch churches which purchase the same for resale and sell the same in California; that the street sales of said Monitor are by branch churches and committees thereof, said branch churches purchasing said Monitors as they do all other Publishing Society items, from said Publishing Society and then selling the same as is done by any other news vendors; that the Publishing Society maintains no stock of its publications or related evangelical or other material whatsoever within the State of California, but receives orders therefor at Boston, which orders are accepted and filled and shipped in interstate movement thereof to, and are directly delivered in, California;

That branch churches and societies in California, when formally organized, become religious corporations and societies under the laws of California, and are in no manner subsidiaries or agents or otherwise associated in the affairs of or in sales or distribution of publications of said Publishing Society

save as prior purchasers and subsequent vendors thereof, and as subscribers thereto, all of which such branches do through branch church and society committees and reading rooms, independently controlled and separately operated by each branch church or society independently and for itself.

That in said California bureaus said Publishing Society also maintains an advertising solicitation service, for solicitation of advertising in said Monitor; that such solicitors have no authority to fix rates or to contract for advertising in said Monitor either in classified or display type thereof, but all orders therefor are proposals only and are accepted or rejected in the advertising department of said Publishing Society, at Boston; that while payments for classified advertising, being comparatively small sums, are sometimes delivered as a convenience to such solicitors and by them forwarded to Boston, all billings for all other advertising are made and sent from, and payable at, Boston; that no contract was ever made nor could the same have been made, within the State of California or [75] elsewhere than at Boston for any proposed advertisement of any book such as the book by plaintiff described as written by him; that no listing in The Christian Science Journal as a Christian Science practitioner, by plaintiff or any other person whomsoever, could have been authorized or contracted for, and none has ever been so authorized or contracted for, within the State of California nor elsewhere than at Boston, Massachusetts;

That no attache or employee of said Publishing Society in said bureaus or otherwise in California is employed by or paid by anyone within California, but each and all are employed at and paid from Boston, Massachusetts; that all contracts for rental of office space for said Los Angeles and San Francisco bureaus and all purchases of any and all main items of equipment and supplies and all other expenses in operation of said bureaus by said Publishing Society in California are contracted at and paid from Boston Massachusetts; that while said advertising solicitors and said news bureaus have petty funds out of which to pay petty items, such as postage and minor items of stationery supplies immediately required, all other items are purchased by and paid for, or sent, from, the Boston offices of said Publishing Society.

That the total number of employees of said Publishing Society located in California is 15, of which 12 are in the Los Angeles bureau and 3 in said San Francisco bureau; that all budget and managerial decisions related to operation and maintenance of said bureau are made by said Trustees and affiant and attaches under both at Boston, and are not made within nor by employees within California; that all complaints or adjustments thereof are made at and from Boston and not within California.

That said Publishing Society transacts no business of any kind or nature within the State of California; that the activities of said Publishing Society, as also those of said The Christian Science Board of Directors and said The First Church of

Christ, Scientist, in [76] Boston, Massachusetts, within the State of California, are wholly and solely religious and evangelical presentation and application of the teachings of Christian Science as taught by Mary Baker Eddy, to the physical, mental, moral, political, business and all other problems of mankind and humanhood and not otherwise.

That in sum the whole and sole purpose of all publications of said Publishing Society, including said Monitor, is healing and evangelical, so that beginning with the first issue, every issue of said Monitor has carried, in the place selected by her therefor, the motto also selected by Mary Baker Eddy, which reads: "First the blade, then the ear, then the full grain in the ear."

Further affiant saith not.

/s/ JOHN H. HOAGLAND.

Verified.

Affidavit of Service attached.

[Endorsed]: Filed June 11, 1953. [77]

[Title of District Court and Cause.]

AFFIDAVIT OF CLAYTON B. CRAIG

Commonwealth of Massachusetts,
County of Suffolk—ss.

Clayton B. Craig, being first duly sworn, deposes and says: [84]

1. That affiant is and has been for about five years one of the five trustees known as "The

Christian Science Board of Directors," which is the name of the self-perpetuating group of five trustees who conduct the religious affairs and activities of The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious trusteeship or society, pursuant to Deed of Trust dated September 1, 1892, made and executed by Mary Baker G. Eddy, in favor of Ira O. Knapp, et al., and under and pursuant to the provisions of the Church Manual of said Church.

2. That true copy of said Church Manual is marked and attached as "Exhibit A" to the affidavit of Gordon V. Comer filed August 8, 1952, in this action, and true copy of said Deed of Trust is therein set forth at page 128, et seq., and the same are hereby incorporated herein by reference thereto the same as though marked and attached as exhibits hereto.

3. That affiant is chairman of The Christian Science Board of Directors, and the other four trustees are

George Wendell Adams,
Francis L. Jandron,
Alfred Pittman,
L. Ivimy Gwalter.

4. That "The First Church of Christ, Scientist, in Boson, Massachusetts" is the name given to the members or congregation of said church trusteeship or society, as provided in said founding Deed of Trust dated September 1, 1892.

5. That all the activities or business of The First Church of Christ, Scientist, in Boston, Massachusetts, and its trustees, The Christian Science Board of Directors, are solely and exclusively the "Father's business" as set forth by Christ Jesus in His statement to His parents in Luke 2:49, "Wist Ye not that I must be about my Father's business," which business or evangelical activity is designed to redeem and save all mankind from sin, sickness, and [85] death, and to establish the Kingdom of God or Heaven on earth.

6. That one of the related activities of said Church and Directors is "The Christian Science Publishing Society," created by Mary Baker Eddy, the Discoverer and Founder of Christian Science, by a Deed of Trust dated January 25, 1898, in favor of Edward P. Bates, et al., as trustees; true copy of said Deed of Trust is marked "Exhibit A" and attached as exhibit to the affidavit of Elizabeth McArthur Thomson filed August 8, 1952, in this action, and the same is hereby incorporated herein by reference thereto the same as though marked and attached as exhibit hereto; that said Deed of Trust named three grantees-trustees and provided for self-perpetuation of the trusteeship; and the three trustees are known as the Board of Trustees whose duties are to conduct the activities and business of said Publishing Society for the promotion of the interests of Christian Science as founded and taught by Mary Baker Eddy. Although "The Christian Science Board of Directors," under the Manual of The Mother Church, have the power of removal of

Trustees of said publishing trusteeship, and, in accordance with said Deed of Trust dated January 25, 1898, and said Church Manual, all net receipts realized by the operation of said publishing trusteeship are payable to the Treasurer of The First Church of Christ, Scientist, in Boston, Massachusetts. every six months to be disbursed in accordance with the direction of the trustee-directors of said Church for religious purposes, nevertheless said Trustees of said publishing trusteeship are otherwise left free to discharge their functions pursuant and subject to the said Manual and the Deed of Trusts creating said trusteeship.

7. That local churches and societies are known as branch churches and societies in the Christian Science Movement; they are, and each of them is, democratically conducted, and said The Mother Church, under its said Manual, assumes no general control thereof, but each such branch church has "its own form of government" and [86] "each branch church" is "distinctly democratic in its government * * * and no other church shall interfere with its affairs," as provided in Sections 1 and 10 of Article XXIII of said Church Manual; that in no sense do branch churches or societies, in California or anywhere, represent The First Church of Christ, Scientist, in Boston, Massachusetts, in any subsidiary or agency capacity whatsoever. That neither The First Church of Christ, Scientist, nor the Christian Science Board of Directors assists in the establishment of branch churches, in California or anywhere, nor in maintenance or supervision of

their religious services or activities; that Reading Rooms of branch churches, in California and elsewhere throughout the world, are activities of and solely conducted by said branch churches exclusively, and wholly separately and apart from either of said trusteeships; that neither the Directors nor said Mother Church assists in the financing of such branch churches (building fund assistance being wholly separate and apart by the Testamentary Trustees under the will of Mary Baker Eddy), nor does either The First Church of Christ, Scientist, or The Christian Science Board of Directors supervise any branch church in California or anywhere. Branch churches are organized and established through the initiative of their own members and simply are authorized and recognized by said The Mother Church through its The Christian Science Board of Directors and thereby come to be known as Christian Science branch churches when and only so long as they meet the standards and provisions of said Manual of The Mother Church.

8. That neither The First Church of Christ, Scientist, nor The Christian Science Board of Directors supervise services in branch churches in the State of California or anywhere, and there is no per capita tax payable or paid by any branch church or society to The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts; that only the members of The Mother Church, as such, pay a per capita tax to said Church, as required by Section 13 of Article VIII of The Mother Church Manual. [87]

9. That neither The Christian Science Board of Directors, nor The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, nor said Publishing Society, has acquired by purchase, nor otherwise than by devise or bequest, any real estate within the State of California; nor has any thereof acquired any encumbrance on real property in California except as part of disposition of real property so devised.

10. That determination of who shall be advertised and listed in The Christian Science Journal is wholly and solely done at Boston, in the Commonwealth of Massachusetts, by The Christian Science Board of Directors and by attaches in the Boston offices of said Board; and is in no manner determined by any person or agency within the State of California.

/s/ CLAYTON B. CRAIG.

Subscribed and sworn to before me this 4th day of June, 1953.

[Seal] /s/ MARY E. TYLER,
Notary Public in and for the County of Suffolk and
Commonwealth of Massachusetts.

My Commission Expires May 25, 1956.

Affidavit of Service attached.

[Endorsed]: Filed June 11, 1953. [88]

[Title of District Court and Cause.]

AFFIDAVIT OF ALEXANDER SWAN

State of California,
County of Los Angeles—ss.

Alexander Swan, 2d, first being duly sworn, deposes and says:

That he is the plaintiff in the above-entitled action. That ever since the 30th day of April, 1930, affiant has been and now is a member in good standing of the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, and has pursued and followed the faith of a Christian Scientist.

That on or about the 15th day of September, 1934, plaintiff pursued and completed classes and courses in the study and preparation as a Christian Science Practitioner. That such courses were given by a teacher, approved by the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts. That affiant personally paid fees for such instruction, which were paid to such teacher [90] and were retained by such teacher as his compensation. That upon the completion of such courses and the submission of testimony and proof thereof, affiant became qualified as a Christian Science Practitioner. That a Christian Science Practitioner follows a professional calling and maintains an office, either by himself or with other Christian Science Practitioners, paying or sharing in the paying of the rent therefor. That such practitioner or practi-

tioners furnish to themselves, necessary telephone service, professional cards, professional stationery and pay for the same. That in addition, they personally acquire the furniture that is used in such office and pay for such books and literature as are used and necessary for the conduct of such practice. That in the following of such calling, the practitioner attends to the needs of his patients and of persons calling upon him for metaphysical assistance; that persons who come to his office as the result of personal contact or by reference from other patients or friends. That no person is sent to him as the result of any church procedure and that the good-will and integrity of the practitioner, are the controlling situations that cause patients to seek his assistance. That there is no direct or indirect control over him by the First Church of Christ, Scientist, in Boston, Massachusetts, nor is he at any time subject to the direction or supervision of said Church or its officials other than he is subject to the bylaws of said organization providing for his discipline in the event of any professional transgression.

That upon a practitioner qualifying as to his education and character, his name, address and telephone number is inserted in the "Christian Science Journal," under the title and caption of "Christian Science Practitioners and Teachers." That persons desiring the professional service of a Christian Science Practitioner refer thereto for the purpose of selecting and obtaining the names, addresses or telephone numbers of the same or ascertaining that

such [91] Practitioner is recognized as qualified by the First Church of Christ, Scientist, in Boston, Massachusetts.

That a Christian Science Practitioner is privileged to make a reasonable charge for the services rendered by him, which charge is discretionary with him and that the fee received therefore is solely his property. That he keeps such office hours as he desires and may accept or reject rendering professional assistance to any person applying therefor. He may move or change his office or location at will, open such office or abstain therefrom for such periods he desires; accept or reject patients and gratuitously render services or make such charges as deems to be proper and reasonable, the proceeds thereof being solely for his benefit.

That the foregoing was the procedure followed by affiant during the period of his practice as a Christian Science Practitioner. That during the sixteen years affiant practiced as a Christian Practitioner he had no contact with or was contacted by said First Church of Christ, Scientist, in Boston, Massachusetts.

That on or about the 15th day of September, 1934, plaintiff's name, address and telephone number was first published in the "Christian Science Journal" under the title and caption of "Christian Science Practitioners and Teachers."

That in church matters, Christian Science Practitioners as such, are no different than any other members of the church. He does not, as such, participate in any church or religious service; he is

not a minister, nor ordained as such, nor is he authorized to perform any civil or religious wedding service or baptismal service. The religious services of a Christian Science Church are conducted by two "Readers." As a member of the church, a Christian Science Practitioner is eligible to be elected a "Reader," since any member of the church is similarly eligible thereto. He is not recognized by civil authority as a religious leader or minister, his only limited recognition being by certain county and state [92] departments, wherein his statements, affidavits or testimony are accepted for and on behalf of a Christian Scientist, as in similar situations where the statements, affidavits or testimony of doctors, or the like, are accepted on behalf of non-christian scientists.

That a Christian Science Practitioner is an individual, independent professional calling in the field of Christian Science, unrelated to and independent of any church functioner, the conduct of Christian Science religious services. That neither the following of such a profession nor the discontinuation or resumption thereof, is any part of a church function, nor requires church approval.

That the Manual of the defendant, First Church of Christ, Scientist, in Boston, Massachusetts, which is therein designated and which is in fact the By-laws of such defendant, provides in Sect. 23 as follows:

"If a member of this Church has a patient whom he does not heal, and whose case he can not fully diagnose, he may consult with an

M.D. on the anatomy involved. And it shall be the privilege of a Christian Scientist to confer with an M.D. on Ontology, or the Science of being.”

That in the book, “First Church of Christ, Scientist, and Miscellany,” by Mary Baker Eddy, which book is used as authority by the defendants, it is provided on page 237 under the designation of “Practitioners’ Fees,” as follows:

“Christian Science Practitioners should make their charges for treatment equal to those of reputable physicians in their respective localities.”

That in answer to the affidavit of Clayton B. Craig, affiant alleges that such affidavit is inaccurate and incorrect, and particularly that Paragraph “8” thereof contained on Page “4,” [93] Line “27” is inaccurate in that the The First Church of Christ, Scientist, and the Christian Scientist Board of Directors do supervise and absolutely control services in the branch churches in the State of California and elsewhere in that said defendants prescribe at each of such churches a uniform reading of the Scriptures and other religious books, which indication of reading cannot be deviated from, modified or supplemented. In addition said defendants maintain full supervision over the policy and manner of the conducting of all Christian Science activities in all branch churches, leaving to the branch churches only the details and methods by which such pre-

scribed policies shall be performed. These include activities of church committees, procedure as to all religious services and also the conducting of reading rooms.

That branch churches do pay a per capita tax to said defendants, based upon the number of membership. That in addition thereto, the members of the branch churches, who are members of the defendant, First Church of Christ, Scientist, in Boston, Massachusetts, pay their respective dues to the church.

That Paragraph "9" found on Page "5," Line "1," is inaccurate and incorrect in that the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, has and does make loans of various monies to branch churches to assist in the building of church edifices and does make arrangements with such branch churches for the repayment of such loans of monies advanced. Said defendant has accepted real estate loans, trust deeds with incomes therefrom, and has made investments and purchases as well as sold various forms of securities in the State of California and elsewhere.

That the affidavit of Walter A. Dane is inaccurate and incorrect in the following matters. That the defendant, The Christian Science Publishing Society, is not exempt from personal property taxes in the State of California and that said defendant [94] has been charged with, billed for and has paid personal property tax upon such property owned and used by it in said State, and particularly in the

County of Los Angeles and the City and County of San Francisco, in which two counties such personal property is situated.

That the defendants, The First Church of Christ, Scientist, and the Christian Science Board of Directors, have made or caused to be made loans as a Massachusetts "body corporate" to branch churches in the State of California, which loans have been recorded in the official records of the Office of County Recorders in the various counties of the State of California.

That the affidavit of John A. Hoagland is inaccurate and incorrect in the following particulars. That contrary to the statements contained on Page "3," Line "24" thereof, earlier editions of "The Christian Science Monitor" contained paid advertisements of health resorts and dentists. That contrary to statements contained on Page "4," Line 27, said defendant The Christian Science Publishing Society does sell and offer for sale books and literature other than those published by itself and includes the sale of such books and literature to branch churches for sale in the respective reading of such churches. They also and likewise furnish to such branch church reading rooms for sale by it various and sundry items such as book ends, literature carrying cases, pictures and geographical atlases, which are neither published nor manufactured by said defendant.

That contrary to the statements contained on Page

“5,” Lines 7 through 9, the defendants The Christian Science Publishing Society has and does maintain merchandise inventories in the County of Los Angeles and the City and County of San Francisco, in the State of California, in conjunction with its branch offices in such cities and is taxed therefor by the Tax Assessors of said respective counties as the owner of such inventories consisting of [95] personal property.

That contrary to the statements contained on Page “5,” Line 17, et seq., reading rooms of branch churches are strictly supervised by the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, must be maintained and administered in accordance with the regulations and policies prescribed by said defendant.

/s/ ALEXANDER SWAN, 2D,
Affiant.

Subscribed and Sworn to before me this 31st day of August, 1953.

[Seal] /s/ EUGENE WOLVER,
Notary Public in and for Said
County and State.

[Endorsed]: Filed September 1, 1953. [96]

Receipt of Copy acknowledged.

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN H. HOAGLAND

Commonwealth of Massachusetts,
County of Suffolk—ss.

John H. Hoagland, being first duly sworn, deposes and says; [98]

1. That affiant is now and has been for about nine (9) years the Manager of The Christian Science Publishing Society and in his capacity as Manager he has all of the responsibilities and performs the usual duties incident to such a position in a large printing and publishing concern in cooperation with the Trustees of The Christian Science Publishing Society and affiant makes this affidavit in connection with the above-entitled court cause, reaverring all pertinent matters set forth in his affidavit of June 8, 1953, filed herein.

2. That affiant, as such Manager of The Christian Science Publishing Society, supervises and directs all sales and shipments of books, periodicals, printed matter, etc., issued or sold by the Society and is kept informed at all times of the merchandise inventories of the Society. Based upon this knowledge, affiant avers that there are no merchandise inventories or stock of the Publishing Society now on deposit or in storage in the State of California and particularly he avers that no such inventories or merchandise are on deposit or in storage in the Cities of Los Angeles and/or San Francisco, and

that there have been no such inventories of merchandise in storage or on deposit anywhere in the State of California since his incumbency as Manager, and from an examination of the books, records and files of the Publishing Society he avers that there has never been any such merchandise inventories in storage or on deposit in said State of California.

3. That in the Cities of Los Angeles and San Francisco, California, certain personal property taxes have been paid annually on desks, chairs, and office fixtures belonging to The Christian Science Publishing Society and typical tax returns and receipted bills relating to such taxes for the year 1953 are hereto attached, marked "Exhibit A" and are hereby made a part of this affidavit as fully as if set forth herein. That the tax returns and receipts for tax payments for prior years are on deposit in The Christian Science [99] Publishing Society files and in no instance do they, nor do those that are attached as "Exhibit A" hereto, list any inventory of stock for tax purposes in said State of California. That affiant further avers that as and when orders for merchandise are received by The Christian Science Publishing Society at the office thereof, One Norway Street, Boston, Massachusetts, they are filled from stock and merchandise inventories located in Boston, Massachusetts and are shipped directly to the California consignee to fill such orders.

4. That affiant avers that The Christian Science

Publishing Society sells and offers for sale Science and Health with Key to the Scriptures by Mary Baker Eddy, the Bible, the established periodicals of the movement and printed matter prepared and published by the Publishing Society or by other printing and publishing organizations under express contract as listed in its stock catalogue, a copy of which is hereto attached and marked "Exhibit B," and all such printed matter by virtue of such sale and offering for sale constitutes authorized literature of the Christian Science movement pursuant to Article XXV (especially Section 8) and Section 3 of Article XXI of the Manual of The Mother Church. That all such books, periodicals and printed matter as are sold either set forth the established doctrine and teachings of the religion of Christian Science or are Bibles, Bible dictionaries and Bible concordances which aid the students of Christian Science in understanding and applying the teachings, or Word of God, according to the doctrine of Christian Science.

That affiant denies that said Publishing Society sells or offers for sale to branch church Reading Rooms items such as book ends, geographical atlases, etc., and avers that the carrying cases and Quarterly covers offered for sale and sold are relatively inconsequential in number and in the proceeds received therefrom and such carrying cases and Quarterly covers are used generally by Sunday School teachers and pupils as a means of carrying the Bible, the [100] Quarterly and Science and

Health with Key to the Scriptures back and forth from Sunday School sessions.

6. That affiant further avers that neither he nor anyone connected with The Christian Science Publishing Society or The First Church of Christ, Scientist, in Boston, Massachusetts, supervise strictly or otherwise the Reading Rooms of branch churches but that such branch church Reading Rooms are wholly the responsibility of the respective branch churches and are conducted and maintained by each of such branch churches pursuant to the provisions of Article XXI of the Manual of The Mother Church.

7. That there have been written, printed and published in more recent years many articles, writings and books purporting to contain ideas, statements or philosophy designed to elucidate, simplify, or modify the teachings and doctrine of authorized Christian Science as discovered and established by Mary Baker Eddy, but while some of these articles, writings or books may not deviate from sound doctrine and teaching they are wholly unauthorized and none of these articles, books or writings are offered for sale or sold by the Christian Science Reading Rooms of the movement (Article XXIII, Section 3, The Mother Church Manual). That plaintiff's book, "God on Main Street," which contains the author's concept of some of the teachings of Christian Science, is in no way discriminated against by not being sold or offered for sale by

The Christian Science Publishing Society and the
Christian Science Reading Rooms.

Further affiant saith not.

/s/ JOHN H. HOAGLAND.

Verified.

Affidavit of Service attached.

[Endorsed]: Filed September 17, 1953. [101]

[Title of District Court and Cause.]

AFFIDAVIT OF ALFRED PITTMAN

Commonwealth of Massachusetts,
County of Suffolk—ss.

Alfred Pittman, being first duly sworn, deposes
and says: [134]

1. That affiant is and has been for about six (6) years one of the five trustees known as "The Christian Science Board of Directors," which is the name of the self-perpetuating group of five trustees who conduct the religious affairs and activities of The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious trusteeship or society, pursuant to Deed of Trust dated September 1, 1892, made and executed by Mary Baker G. Eddy in favor of Ira O. Knapp, et al., and under and pursuant to the provisions of the Church Manual of said Church.

2. That true copy of said Church Manual is

marked and attached as "Exhibit A" to the affidavit of Gordon V. Comer filed August 8, 1952, in this action, and true copy of said Deed of Trust is therein set forth at page 128, et seq., and the same are hereby incorporated herein by reference thereto the same as though marked and attached as exhibits hereto.

3. That affiant is now the Chairman of The Christian Science Board of Directors and the other four trustees are:

George Wendell Adams

Francis L. Jandron

L. Ivimy Gwalter

Clayton B. Craig

4. That "The First Church of Christ, Scientist, in Boston, Massachuetts" is the name given to the members or congregation of said Church trusteeship or society, as provided in said founding Deed of Trust dated September 1, 1892.

5. That the healing ministry of physical ills and diseases in Christian Science by Christian Science practitioners, whether listed in The Christian Science Journal or not, is strictly a religious rite, ceremony, or practice since fundamentally it consists of prayer to God, or the Supreme Being, or by whatever name God is called; and the fact that a practitioner is compensated for his services directly by the patient seeking his aid rather than by way of church salary [135] as is a minister, priest, or rabbi, is only incidental and such financial trans-

action does not constitute a commercial transaction. The payment of such fees follows the Scriptural teaching that a "labourer is worthy of his hire" and Jesus' admonition to his disciples when he sent them into the world to heal the sick, cast out devils, and raise the dead in his name. (Matt. 10:5-10) that the healing practice is not a commercial or money-making activity, notwithstanding the fact that the practitioner receives just and fair compensation for his services. The term "class instruction" in Christian Science means a two weeks' course of intensive teaching and study by an authorized Christian Science teacher and a group of thirty Christian Scientists, and is intended to develop and increase one's understanding of the teaching, doctrine, and practice of Christian Science regardless of the human or vocational activities of the pupil, and only in relatively few cases do such students take up regular healing practice as a Christian Science practitioner. Such instruction and study is wholly religious in its character, purpose, and implication although, of course, intellectual and educational advantages of a general character accrue from such class instruction or systematic teaching. Such teaching or class instruction does not alone qualify one to do the healing works of Christ Jesus' ministry either as a Journal-listed practitioner or otherwise since spiritual growth and understanding are fundamental to such healing practice and can be gained only through earnest, consecrated study and practice of the teachings of Christian Science. It is a notable fact that many adherents of the

Christian Science Church practice the healing ministry for themselves and others while engaged in other vocations and usually successful practitioners with ability to heal the sick gradually evolve into the full-time healing ministry as Christian Science practitioners as their spiritual growth and understanding enlarge. In this way practitioners prove by their works to the satisfaction of The Christian Science Board of Directors their eligibility [136] for listing in The Christian Science Journal. While there are many similarities between Christian Science practitioners and our friends of the medical profession, exact analogies cannot be drawn and healing by prayer or spiritual means as practiced by a Christian Science practitioner can never become a money-making commercial activity or merely a means of gaining a livelihood.

6. That branch Christian Science churches and societies are initiated and evolve as democratic organizations and are strictly based upon "grass-roots" beginnings and in no sense are they founded, established, or supervised and conducted by hierarchical authority. The Manual of The Mother Church constitutes the discipline and basic ecclesiastical law and authority for branch churches and societies. The practices, provisions, and procedures set forth in Articles XXIII and XXXV of the Manual of The Mother Church and of other Articles and terms thereof relate primarily to an organized and orderly method by which branch churches and societies as formed may be recognized by The

Mother Church so as to be listed in The Christian Science Journal. That while there are certain provisions of the Manual authorizing and directing The Christian Science Board of Directors to supervise within the terms of the Deed of Trust and Manual such branch churches and societies, The Mother Church has no control whatever of the internal branch church affairs nor does it have any property interest in or control over the property, real or personal, or the temporalities of the branch churches and societies, and in this connection this affiant adopts and reavers all of the allegations of the affidavit of Clayton B. Craig, filed herein dated June 4, 1953, with special emphasis on paragraphs 5, 6, 7 and 8 thereof.

/s/ ALFRED PITTMAN.

Verified.

Affidavit of Service attached.

[Endorsed]: Filed September 17, 1953. [137]

[Title of District Court and Cause.]

AFFIDAVIT OF GORDON V. COMER

Commonwealth of Massachusetts,
County of Suffolk—ss.

Gordon V. Comer of the City of Boston, Commonwealth of Massachusetts, being first sworn, deposes and says:

1. That he is and has been for more than five years last past a resident of the City of Boston, Commonwealth of Massachusetts, and for the same time and period has occupied and now occupies the office of Clerk of The First Church of Christ, Scientist, in Boston, Massachusetts, (an unincorporated religious society, association or trusteeship) under and pursuant to the provisions of the Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, by Mary Baker Eddy, which Manual contains the fundamental law, rules, bylaws, and polity of said Church; and that as such Clerk he performs the duties and exercises the authority vested in him under said Church Manual, a copy of which is hereto [164] attached, hereby made a part hereof and marked "Exhibit A."

2. That the "Church of Christ, (Scientist)" was organized as a corporation pursuant to the corporation laws of the Commonwealth of Massachusetts on the 23rd day of August, 1879, and for a period of approximately ten years thereafter operated, functioned and carried on as a religious corporation doing those things only which were incident to the conducting of religious activities and services of a Christian church in the Commonwealth of Massachusetts.

3. That said "Church of Christ, (Scientist)" the Massachusetts corporation, was on the 2nd day of December, 1889, at a meeting of the members thereof duly called and regularly held dissolved by

a vote of the corporation, a certified copy of which vote is hereto attached, hereby made a part hereof and marked "Exhibit B."

4. That between said date of disincorporation to wit the 2nd day of December, 1889, and the 1st day of September, 1892, the "Church of Christ, (Scientist)" conducted services and carried on its religious activities as an unorganized or unincorporated religious association or society.

5. That on the 1st day of September, 1892, Mary Baker G. Eddy made, executed and delivered a deed of trust to Ira O. Knapp, et al., as trustees, certain real property in the City of Boston on which the original church edifice of said Church was thereafter erected and now stands, by which deed of trust and Church Manual, "Exhibit A" as above recited, the legal structure of said "Church of Christ, (Scientist)" was established as a trusteeship or unincorporated religious association or society (see copy of said deed of trust in "Exhibit A," Church Manual, page 128, et seq.); and that ever since said date of September 1, 1892, to this date said "Church of Christ, (Scientist)" now The First Church of Christ, Scientist, in Boston, Massachusetts, as it came to be designated at that time, has operated and carried on in all respects as an unincorporated religious association [165] or society; and that notwithstanding the fact that the proper officer of the incorporated Church failed or omitted to take the appropriate steps following the adoption of the vote to dissolve, to effect a cancella-

tion of record of the corporate charter of said "Church of Christ, (Scientist)" the corporation in truth and in fact did cease to exist, and since the adoption of said vote to dissolve on the 2nd day of December, 1889, said corporation has never owned any property of any kind whatsoever, has had no officers or directors as an incorporated entity under the corporation laws of Massachusetts or of any other state or governmental authority, nor has said incorporated Church carried on or maintained any activities as a corporation under the corporation laws of the Commonwealth of Massachusetts or any other state or governmental authority.

6. That The First Church of Christ, Scientist, in Boston, Massachusetts, ever since September 1, 1892, has in all respects operated, carried on and maintained all of its activities as an unincorporated religious trusteeship, association or society; and that the Board of Trustees of said unincorporated trusteeship is designated as "The Christian Science Board of Directors" and deemed under Chapter 39 of the Public Statutes of Massachusetts for certain specified purposes to be a body corporate (see "Exhibit A," page 130, paragraph 1, and footnote).

7. That there is attached hereto, made a part hereof and marked "Exhibit C," a photostatic copy of the envelope directed by Frank M. Jordan, Secretary of State of the State of California, to said The First Church of Christ, Scientist, in Boston, Massachusetts, One Norway Street, Boston, Massachusetts, in which was enclosed an Amended

Complaint and Alias Summons in the above-entitled litigation and the original of the photostatic copy of attached letter from said Jordan to said The First Church of Christ, Scientist, in Boston, Massachusetts, dated May 29, 1952, which copy of letter is hereby made a part hereof and marked "Exhibit D"; and that affiant for [166] himself, his associates and said The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious society or association, avers and declares that the action of plaintiff herein in seeking to subject to the jurisdiction of this Court the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated religious association or trusteeship is ineffective and of no avail.

Further affiant saith not.

/s/ GORDON V. COMER,
Clerk.

Subscribed and Sworn to before me this 19th day of June, 1952.

[Seal] /s/ MARY E. TYLER,
Notary Public in and for the Commonwealth of
Massachusetts.

My commission expires 25th day of May,
1956. [167]

CERTIFICATE

Hazel A. Firth, Manager of Executive Office of The Christian Science Board of Directors of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, and custodian of the minute books and records of said Church:

Hereby Certifies: That the attached Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, by Mary Baker Eddy, is a true and correct copy thereof and constitutes the law, rules, bylaws and polity of the Christian Science religious denomination.

[Seal] /s/ HAZEL A. FIRTH,
Manager of Executive Office.

Dated June 19, 1952.

[Endorsed]: Filed August 4, 1952. [168]

[Title of District Court and Cause.]

MEMORANDUM DECISION

Four motions have been submitted for decision:

(1) To dismiss the action as to each defendant on the ground the court is without jurisdiction because of failure of the plaintiff to show diversity of citizenship;

(2) To dismiss the action for lack of jurisdiction over the person of each defendant, (a) on the ground that none of defendants are legal entities

with capacity to be sued in California on the purported causes of action set forth in plaintiff's complaint; and (b) on the further ground that none of the defendants is amenable to process within the State of California, viz, is not doing business in California;

(3) To quash service of process upon the defendants on the ground that said process is insufficient and that the purported substituted service of process (on the California Secretary of State) is neither authorized nor valid in the type of [453] action here presented;

(4) To dismiss the second amended complaint and each count thereof against the parties defendant, on the ground (a) that the court lacks jurisdiction over the subject matter alleged in each of the said counts, and (b) on the further ground that each count fails to state a claim upon which relief can be granted.

I.

Diversity of Citizenship

Whether the trust entities in Massachusetts are citizens, is an interesting question. As to a corporation, nothing less than a de jure existence satisfies the diversity requirement. *Great Northern Fire Proof & Hotel Co. v. Jones*, 177 U. S. 449.

The character of the organization or entity is to be determined by the law of the state which gave it birth. *Thomas v. Ohio State University*, 195 U. S. 207.

While unincorporated associations are not citizens and under the diversity rule and we must look to the citizenship of the members, there is apparently no authority as to whether a trust created by statute and considered by statute to be a "body corporate" is such a citizen.

Chap. 68 of the Annotated laws of Massachusetts, authorizes the defendants, the First Church of Christ, Scientist, and the Christian Science Board of Directors [hereafter referred to as the religious entities] to exist as entities at least for limited purposes. It characterizes them as "bodies corporate."

Chap. 182 of the Annotated laws of Massachusetts authorizes the familiar "Mass. Trust" and makes it amenable to [454] process and suit "in a like manner as if it were a corporation." Probably the defendant, The Christian Science Publishing Company, comes within this category.

The first two defendants, the religious entities, have heretofore qualified to do business in California in like manner as corporations, and made the necessary filing with the Secretary of State [Sec. 6403 Corp. Code.] Thereafter, and before the start of the present litigation, these defendants withdrew and terminated their qualification with the Secretary of State. This prior filing was at least an admission by such defendants of their status as corporate entities of the State of Massachusetts.

The court is not without doubt as to its decision but concludes the three defendants are corporate bodies of the State of Massachusetts at least for limited purposes. We do not reach the question of

the extent of such purposes on this motion. Accordingly, the motion to dismiss counts 1, 2, & 3, of the second amended complaint, based on lack of diversity of citizenship, is denied.

II.

Lack of jurisdiction because:

(a) Defendants are not legal entities with capacity to be sued in California, and

(b) Are not doing business in and are not amenable to process in California.

Again we must proceed largely on logic and not on settled case law. What was said under Point I applies here.

We look to the Massachusetts statute and case law as to the status of these defendants, and so disregard Sec. 388 CCP of California. We disregard also the cases involving unincorporated associations and trade unions. These [455] clearly do not concern "entities" or "bodies corporate."

Assuming that there is corporate entity of the two religious bodies under Massachusetts law for a limited purpose, it does not logically follow that these enties were unable to act outside this purpose or act in substance illegally. The automaton is created; it does not always respond as its creator intended.

Corporations with limited purposes are common. In fact there are limits to the purposes of every

corporation. Many cases could be cited as to the amenability of corporations to process, who acted outside or beyond their stated purposes.

True, these religious entities were created "bodies corporate" by statute for limited purposes only. Likewise every corporation is created for certain stated and limited purposes so such a contention brings us nowhere.

Again, the court is not without doubt but holds that the motion to dismiss the action on the ground that none of defendants are legal entities with capacity to be sued, is denied.

Doing business in California

We are met at the threshold with the fact that the first two defendants considered (the religious bodies) heretofore qualified with the California Secretary of State. This was an admission that they were then doing business in California.

The record shows no changes in activities since the withdrawal of the qualifications. If they were doing business then, they are doing business now.

To plaintiff's showing that defendants are doing business there is the reply, "We are doing only God's business." [456] We question the sufficiency of this reply in a legal sense.

The file shows numerous real estate transactions engaged in by the two religious entities. Admittedly these entities deal with real and personal property acquired by gift or devise. Admittedly they super-

wise California branch churches, (which are separate legal entities or associations.)

They have appeared in local courts in connection with such property matters and have objected to allowances of attorneys' fees, etc. The religious entities have thus sought the protection of our courts. " * * * Manifest injustice [] would ensue if a foreign corporation permitted by a state to do business therein and to bring suits in its courts, could not be sued in those courts, while allowed the benefits, be exempt from the burdens * * *." *Barrow Steamship Co. v. Kane* (1897), 170 U.S. 100.

As to the third defendant, the showing is clearer. The Christian Science Publishing Company publishes the *Christian Science Monitor*. The affidavits of John H. Hoagland filed June 11, 1953, in behalf of defendants, show that the Christian Science Publishing Company is doing business in California. The *Monitor* has a corps of news gatherers throughout the world, including California. It maintains a news bureau in Los Angeles and San Francisco. It sells its publications to branch churches and stores. They in turn distribute the paper. The *Monitor* publishes a Pacific coast edition and runs advertising from California. The California bureaus solicit advertising in California which is accepted in Massachusetts. Under the decisions, the place of acceptance is of no great moment. There are 15 employees in California, paid from Massachusetts.

Whether a corporation is doing business in Cali-

ifornia is a question of state law, not federal law. [457]

Erie RR Co. v. Tompkins,
(1938) 304 U. S. 64;

Perkins v. Louisville & N.R. Co.,
(D. C. So. Cal. 1951); 94 F. Supp. 946.

Tested by California cases:

Boote's Hatcheries & Packing Co. v. Superior
Court,
(1949) 91 C. A. (2) 526;

Sales Affiliates, Inc., v. Superior Court,
(1950) 96 C. A. (2) 134;

Thew Shovel Co. v. Superior Court,
(1939) 35 C. A. (2) 183;

West Publishing Co. v. Superior Court,
(1942) 20 Cal. (2) 720,

the court concludes defendants were doing business in California.

The court again is not without doubt but holds that the motion to dismiss the action on the ground defendants are not doing business in California, is denied.

III.

The service by substitution on the Secretary of State.

Sec. 6504 Corporation Code provides only for service on a corporation or a joint stock company or an association doing business in this state. Do these trust entities come within the statute?

The Secretary of State heretofore accepted the qualifications of the two religious entities under the Code Section. Actions by an administrative or executive agency in handling the law it administers may be looked to for interpretation of the meaning or scope of the law.

Since under Massachusetts law the entities are "bodies corporate" at least for limited purposes, it would seem that the California section applies and the use of substituted service would be proper.

But a more serious objection to substituted service [458] is relied on by defendants. Defendants contend that substituted service on the Secretary of State is restricted to causes of action that arise from doing intrastate business in California, citing *Dunn v. Cedar Rapids Engineering Co.* (1945) 152 F. (2) 733; *Minor v. United Airlines Transp. Corp.* (1936 D. C. So. Cal.), 16 F. Supp. 930; *Old Wayne Mutual Life Ins. Assn. v. McDonough*, 204 U. S. 8; *Simon v. Southern Ry.*, 236 U. S. 115 and *Perkins v. Benguet Consol. Mining Co.*, (1952) 342 U. S. 437.

Corporation Code, Sec. 6403 states, "A foreign corporation shall not transact intrastate business in the state until" it qualifies with the Secretary of State. This is a transitory action. The purported causes of action arose in Massachusetts, not in California. Our case does not come here on removal, but was originally filed in this court.

Although not spelled out by defendants, from their cases cited we evolve this contention: (1) That

since no filing existed with the Secretary of State, the attempts to use substituted service is made on the ground that defendants should have qualified with the Secretary of State. (2) That by Sec. 6403, et seq., Corporation Code, California is by law exacting a consent, express or implied, to acceptance of service. (3) That such consent, express (by qualifying) or implied (by failing to qualify), is a limited consent, conforming to the extent of the statute, i.e., for causes of action arising in intrastate business conducted by defendants in the State. (4) Therefore there is no implied consent concerning causes of action arising in Massachusetts.

We start with general principles. To subject a foreign corporation to process in California, (a) the corporation must be doing business in California, [see pt. II] and (b) there must be service on “an agent authorized by appointment or by [459] appointment or by law to receive service of process.” Rule 4(d)(3), Rule of Civil Procedure. [Emphasis added.]

Is there a further requirement that the cause of action arise in the state or district? We consider first the requirements of jurisdiction over the subject matter.

We must distinguish between actions commenced in the State court and removed to the Federal court, and actions commenced originally in the Federal court. On a removal case, although diversity of citizenship and jurisdictional amount must be present, another rule comes into play, that unless the State court had jurisdiction there is no jurisdiction

on removal to the Federal court. Cases originally brought in the Federal court, however, rest upon the Congressional grant of power to the District court, fixing its jurisdiction. *Barrow Steamship Co. v. Kane*, (1898) 170 U. S. 100. *Carmack v. Panama Coca-Cola Bottling Co.*, (1951, 5 Cir.) 190 F. (2) 382, 385.

Sec. 1332 (a) (1), Title 28, U.S.C.A., provides: "The District courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs and is between (1) Citizens of different States." 28 U.S.C.A. Sec. 1332 (a) (1).

Sec. 1391, Title 28, U.S.C.A. speaks of venue in diversity cases and provides in (a) that actions founded on diversity of citizenship may be brought only in the judicial district where all plaintiffs or all defendants reside. [See *Moss v. Atlantic Coast Line R. Co.*, (1945, 2 Cir.) 149 F. (2) 701, decided before revision of Title 28] and in (c) that a corporation may be sued in any district in which it is incorporated, licensed to do business, or is doing business. [460]

Sec. 1441 concerns removed actions. See *Polizzi v. Cowles Magazines*, (1953) 345 U. S. 663 as to both sections.

Thus, jurisdiction of the diversity cause is provided for by Sec. 1332, Title 28, U. S. C. A. and venue by Sec. 1391. Any U. S. District court has jurisdiction of a diversity case originally filed in that court. Venue is fixed by Sec. 1391 alone. It

will be noted that no other statutory limitation, such as "where the cause of action arose" appears in the statutes. It is axiomatic that with such venue provisions, there would be situations where there was venue and yet the cause of action might have arisen in a distant state, e.g. See: *Ezell v. Rust Engineering Co.* (D. C. So. Cal. 1948) 75 F. Supp. 980 pt. 6.

But in a removal case, the jurisdiction of the district court is limited by the jurisdiction that existed in the State court. *Cyc. of Fed. Procedure*, 3rd Edition, Sec. 3.11, p. 199; *Venner v. Michigan Central R.R. Co.*, (1926) 271 U. S. 127.

Dunn v. Cedar Rapids Engineering Co., 152 F. (2) 733, was a removed case and the inquiry was properly made as to whether or not there was jurisdiction in the California courts, when the cause of action arose elsewhere. However, *Minor v. United Airlines Transp. Co.*, (1936) [D. C. So. D. Cal.] 16 F. Supp. 930 relied on in *Dunn v. Cedar Rapids*, (*supra*) was apparently a case filed originally in the District court and would not therefore seem to support the decision in the *Dunn* case. On the question of jurisdiction over the person (considered hereinafter) both the *Dunn* and *Minor* cases would be in point.

Since the *Dunn* case, however, the California courts have held that they have jurisdiction of transitory actions against foreign corporations on causes of action arising outside the state of California. These California decisions consider the problem as one of jurisdiction over the subject [461]

matter and not a problem of jurisdiction over the person.

Koninklijke, L. M., v. Superior Court,
(1951) 107 C. A. (2) 495, 237 Pac. (2)
497, at 499:

“* * * The judicial trend is toward putting corporations upon the same footing as natural persons in regard to the jurisdiction of suits by or against them. (Barrow SS Co. v. Kane, 170 U. S. 100, 106 [18 S. Ct. 526, 42 L. Ed. 964]; Denver & R.G.R. Co. v. Roller, 100 F. 738, 743 [41 C.C.A. 22, 49 L.R.A. 77].) The weight of modern authority is to the effect that the mere fact that the cause of action arose, or the transaction giving rise to it occurred beyond the territorial limits of the state of suit does not prevent effective service of process upon an actual agent of a foreign corporation. (See annotation in 30 A.L.R. p. 255 and cases cited at p. 258, et seq.) * * *”

And at 501:

“* * * Since this is a transitory action, the court has jurisdiction hereof and since petitioner is doing business in the state and amenable to process it is immaterial that the subject matter is wholly unrelated to any of the business conducted by the petitioner in this state
* * *”

Schultz v. Union Pacific RR Co.,
(1953) 118 A.C.A. 189, 118 C.A. (2).

See:

Winfield v. United Fruit Co.,
(1933 Cal. Sup. App.) 135 Cal. App. 791.

Thus, the basis of the Dunn case (considered as a holding on jurisdiction over the subject matter) is no longer present, since California courts have spoken on the subject. [462]

The other cases relied on by defendants are not decisive. Perkins v. Benguet Consol. Mining Co., (1952) 342 U. S. 437, likewise concerns jurisdiction of State courts. The court held that due process did not prohibit the State from taking jurisdiction over a foreign corporation and said that neither did it compel the state court to take jurisdiction; that the case should be remanded so that Ohio might say whether it based its decision on Federal or State law. In essence the court holds that Ohio is free to take or decline jurisdiction over the corporation. Simon v. Southern Railway, (1914) 236 U. S. 115, concerned a State action and arose by a bill in equity originally brought in the federal court to restrain the enforcement of a state judgment obtained on substituted service. But the Louisiana statute provided no notice to the state defendant (p. 117) and the defendant received no notice (p. 118) and service was not made on the Secretary of State as required, but on an assistant secretary (p. 118). The dictum (p. 130) that the power of a state to provide for substituted service on foreign corporations is limited to dealing with transactions within the state is certainly made a nullity by Perkins v. Benguet Consol. Mining Co. (*supra*).

Likewise, in *Old Wayne Life Assn. v. McDonough* (1907) 204 U. S. 8, on writ of error to the Supreme Court of Indiana, the problem concerned a judgment on substituted service obtained in the state courts of Pennsylvania. No notice was given by the Insurance Commissioner of Pennsylvania to the Pennsylvania defendant (p. 13). Conceding the case originally stood in part for the proposition that service was bad because defendant was transacting no business in Pennsylvania (p. 22) it would not be law now in view of *Perkins v. Benguet* [463] (supra); *Morris & Co. v. Skandinavia Ins. Co.*, (1929) 279 U. S. 405, often cited, is not decisive. It was a removed case. The court echoes the dictum and holding of *Simon and Old Wayne*, but the court held defendant was not doing business in the state prior to removal.

Turning now to cases originally filed in district courts we believe that *Barrow SS Co. v. Kane*, (1897) 170 U. S. 100 is still good law. "The jurisdiction (diversity) so conferred upon the national courts cannot be abridged or impaired by any statute of the State" (p. 111).

We next consider the requirements of jurisdiction over the person. Where in an action originally filed in the district court the service is made on an officer or agent of the foreign corporation within the jurisdiction or made on an agent actually appointed pursuant to the statutory requirements of a state, no problem is presented. In the case at Bar we have substituted service.

Rule 4 (d) (c) of the Rules of Civil Procedure provide for service upon a foreign corporation by delivery of process to an "agent authorized by appointment or by law to receive service of process * * *." Sec. 411 (2) Code of Civil Procedure, "if the suit is against a foreign corporation * * * doing business in this state, in the manner provided by Sec. 6500-6504, inclusive, of the Corporations Code."

Sec. 6500 Corporations Code designates certain agents or officers of the corporation upon where process can be served, including an agent appointed pursuant to statute.

Sec. 6501 provides in part as follows: "* * * or if no agent has been designated and if no one of the officers or agents of the corporation specified in Sec. 6500 can be found after diligent search," then service shall be made by [464] delivery to the Secretary of State or to an assistant or deputy secretary of State.

Thus, it would at first blush appear that under California statute, substituted service on the Secretary of State is valid only as to corporations engaged in intrastate commerce, i.e., that the implied consent goes only to intrastate business and is therefore a qualified consent to service on the Secretary of State. *Dunn v. Cedar Rapids Engineering Co.* (supra); *Minor v. United Airlines, etc.* (supra).

The California statute originally did not limit its sweep to only intrastate business. The amendment was made in 1929 and indicated a concern by California over burdening interstate commerce.

An analysis in the Stanford Law Review, "Suing Foreign Corporations in California," Vol. 5, p. 503 at 511 to 513, probably gives the answer and suggests, based upon the California cases cited therein, that a judicial repeal of this section has occurred, and that the present view of California courts is "where, exactly, interstate commerce ends and local commerce begins seems to be largely immaterial, whether the particular business of these corporations is denominated intrastate or interstate commerce, does not change the fact that they are still doing business in this State." *Fielding v. Superior Court*, 111 Cal. App. (2) 490; cert. den. 344 U. S. 897. California cases have not considered our particular problem. The *Dunn* and *Minor* cases stand alone. Accordingly, we conclude that under California law substituted service is available on the Secretary of State whether the corporation is doing business intrastate, interstate, or both.

We do not pause to burden this lengthy memorandum by quoting from the analysis made by the Stanford Law Review or by an analysis of the cases cited therein, nor do we [465] pause to consider whether the three defendants are engaged in intrastate or interstate business. The court holds that since this is a transitory action, and was originally filed in this court, the place where the cause of action arose has no bearing on the problem. The court is not without doubt, however, as to the use of substituted service on the Secretary of State, in view of the use of the words, "intrastate business"

in the California statute. The motion to quash service of process on the defendants is denied.

IV.

The motion to dismiss on the ground, (a) that the court lacks jurisdiction of the subject matter, and (b) on the further ground that each count fails to state a claim upon which relief can be granted.

(a)

Any question concerning the jurisdiction of the subject matter has been disposed of in earlier sections.

(b)

The failure to state a claim for which relief can be granted.

(1)

First Cause of Action

The first cause of action, in substance, alleges that the plaintiff had heretofore been a Christian Science Practitioner and had had his name listed in the official publications of the church; that he withdrew his name from the list, spent a year writing a book and then requested that his name be reinstated as a Christian Science Practitioner in the publications of the church. That defendants failed to reinstate his name. That no disciplinary proceedings were taken under Church law; that he has exhausted his remedies [466] within the church; that he has been damaged in the sum of \$100,000.

It is axiomatic that civil courts will not dictate

or interpret ecclesiastical doctrine, and that courts will not review decisions of church bodies or direct them to proceed in any particular manner. *Maxwell v. Brougher*, 99 Cal. App. 824.

Plaintiff has no property right in being listed as a Practitioner in the *Christian Science Journal*. It is likewise clear that the Publishing society, like any magazine or newspaper, may refuse to carry advertising or listings in its publications. *Reeda v. The Tribune Company*, 218 Ill. App. 45 (1920).

Obviously no claim for relief has been stated and the motion to dismiss on that ground is granted.

(2)

Second Cause of Action

The second cause of action incorporates the allegations of the first, but adds additional facts, to wit, that while plaintiff previously earned the sum of \$15,000 per year, since his year of study and the writing of the book he would now earn \$25,000 as a Christian Science Practitioner, and prays damages in the sum of \$25,000 per year. What has been stated as to the first cause of action applies equally to the second and the motion to dismiss for failure to state a claim for relief, is granted.

(3)

Third Cause of Action

The third cause of action incorporates the substance of the first and second, recites the research on, and publication of the book, "God on Main

Street," alleges a submission of the book to the defendants for examination and their [467] failure to reply; the publication of the book and the fact it was again transmitted to the defendants, then alleges that the defendants "conspired amongst themselves and each other to hinder, delay and deny circulation of the book among the members of the Christian Science faith, and among members of the public generally," and that "defendants have, and continue to by means of such conspiracy, hinder, delay and deny such circulation" and "have impugned and vilified to the members of the Christian Science faith and to the public generally the character, motives, ethical and professional standing of plaintiff in a manner calculated and intended to injure, diminish, harm and destroy the value and status of such book both as a property and a religious treaty * * *."

The third cause of action further alleges that the defendants were vendors, sellers and distributors of literature to its various branch churches, reading rooms thereof and various book stores and vendors of literature; alleges on information and belief that defendants informed and notified said branch churches, reading rooms and the independent book stores "that they should not thereafter exhibit, purchase, acquire, sell or distribute plaintiff's said book 'God on Main Street' and that said defendants informed or caused said churches, reading rooms and sellers of literature * * * that their purchase, sale or distribution of said book would cause the displeasure of defendants, and that de-

defendants would thereafter fail, refuse and neglect to subsequently furnish them with its literature * * *.” That in furtherance of the conspiracy, defendants refused lawful advertising matter tendered to the Christian Science Monitor, concerning the book; and that the refusal of the defendants to insert plaintiff’s name in the Christian Science Journal was in [468] furtherance of such conspiracy. Plaintiff prays damages in the sum of \$100,000 compensatory damages, and \$50,000 exemplary damages.

As to this cause of action, the court prefers to treat the motion to dismiss as a motion for summary judgment under Rule 12(b) and Rule 56 of the Rules of Civil Procedure for the reason that matters outside the pleadings, such as the Manual of the Mother Church in Boston have been considered by the Court. The court has heretofore indicated its intention to so proceed in this matter, and has given both parties an opportunity to present matters under Rule 56 [motion for summary judgment].

Treated thus as a motion for summary judgment, the court is of the view that the motion should be granted. The conspiracy is alleged in most general terms, and the gist of it is to charge that the defendants conspired to hinder the circulation of plaintiff’s book and have “impugned and vilified the character motives, ethical and professional standards of the plaintiff in a manner calculated to injure and destroy the book.” Boiled down, we

have therefore, a case where a member of a religious faith writes a book which does not find acceptance with the leaders of the particular religious order. It seems elemental that the First Amendment to the Constitution, in providing for the right of free speech and the right to worship as one pleases, would include the right of a religious order to condemn a book as heresy, to condemn its writer as a heretic, and to forbid its members to sell, buy or read the book. The court is only commenting on the right of a religious order to do these things, and not indicating approval or disapproval of such conduct. [469]

More specifically, the plaintiff alleges that the defendants have notified their own book stores and other book stores to which the defendants sell church literature, not to exhibit or sell plaintiff's book on pain of displeasure of the defendants and subsequent refusal of the defendants to thereafter sell such book stores church literature. Again, it would seem to be within the right of a religious order to determine what literature its own stores would sell and to also say to book stores in general, "If you sell heresy in your stores, we will withhold from you church literature." The court can well imagine the feelings of devout church members, on entering a book store and finding one of their approved religious works lying side by side with a book making a critical attack on that particular faith.

In his brief, but not in his complaint, the plain-

tiff attempts to bolster the third cause of action by contending his action is one for violation of the antitrust laws. At best this would concern plaintiff's allegation concerning its actions concerning independent book stores, and the making known of its displeasure if the plaintiff's book was sold. Is this the "kind of restraint of trade or commerce which the Act condemns?" All restraints on interstate commerce are not illegal. *Apex Hosiery Co. v. Leader*, (1939) 310 U. S. 469. Clearly there must be shown substantial impact on interstate commerce or an attempt to restrain commercial competition in some substantial way. Restraint upon commercial competition in the absence of price fixing is not illegal per se. Even organized baseball is not considered commerce under the statute, *Federal Baseball Club, etc., v. National League, etc.*, 259 U. S. 200. The court feels it would be a waste of time and unduly dignify the pleading filed [470] by the plaintiff to give further consideration to this point.

The motion for summary judgment on behalf of the defendants on the third cause of action is granted.

The court's doubt on the rulings on first three motions leads the court to the conclusion that these motions should be denied and the fourth motion to dismiss the first and second causes and to grant summary judgment on the third cause, about which the court has no doubt, should be granted. The entire record will be thus before the Circuit in the

event of an appeal and if the court is in error on the earlier motions, the matter can be remedied without a remand. If on the other hand, the court grants one of the preliminary motions, it has no authority to rule on the fourth motion, raising the question as to whether a claim for relief has been stated. *Howard v. Archer*, 115 F. (2) 342, where the Circuit held that "in the absence of jurisdiction it was error to adjudge that the complaint was [so] barred" by the statute of limitation.

Defendants will serve and file proposed judgment, including findings on the third cause of action, pursuant to the rules of this court.

Dated: October 27, 1953.

/s/ JAMES M. CARTER,

[Endorsed]: Filed October 30, 1953. [471]

In the District Court of the United States, Southern
District of California, Central Division

No. 13517—C

ALEXANDER SWAN, 2d,

Plaintiff,

vs.

THE FIRST CHURCH OF CHRIST, SCIEN-
TIST, IN BOSTON, MASSACHUSETTS,
Also Known as THE CHURCH OF CHRIST
(SCIENTIST), a Juridical Entity Recognized
and Regarded as Such, and as a Body Corpo-
rate, Under the Laws of the Commonwealth of
Massachusetts; THE CHRISTIAN SCIENCE
BOARD OF DIRECTORS, a Juridical Entity,
Recognized and Regarded as Such, and as a
Body Corporate, Under the Laws of the Com-
monwealth of Massachusetts; THE CHRIS-
TIAN SCIENCE PUBLISHING SOCIETY,
a Juridical Entity, Recognized and Regarded
as Such, and as a Body Corporate, Under the
Laws of the Commonwealth of Massachusetts;
DOE I TO X, DOE CORPORATIONS I, II,
III and IV; DOE ASSOCIATION, a Non-
Profit Association,

Defendants.

ORDERS RE MOTIONS TO DISMISS AND
TO QUASH SERVICE OF PROCESS
TOGETHER WITH FINDINGS OF
FACT AND JUDGMENTS ON SECOND
AMENDED COMPLAINT

The matter of the following motions to dismiss

second amended complaint and to quash substituted service of process upon the named parties defendant, together with the affidavits and exhibits thereto attached in support thereof and the counter-affidavits and attached exhibits and the reply affidavits and attached exhibits in [472] connection therewith, together with the written points and authorities and memorandum-brief in support of said motion and the opposing points and authorities and memorandum-brief first came on regularly to be heard June 29, 1953, in Court No. 3 of the above-entitled Court before the Honorable James M. Carter, Judge presiding, at which time said matters were continued for further briefing and argument on September 21, 1953, before said court, and further hearing on said matters was held before said court on October 26, 1953; The First Church of Christ, Scientist, in Boston, Massachusetts, an unincorporated trusteeship or society; The Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, a self-perpetuating group of individual trustees for said religious trusteeship or society, and The Christian Science Publishing Society, an unincorporated trusteeship, appearing by Lindstrom and Bartlett through Ralph G. Lindstrom and Harris Robison to present said motions at said hearings, and Alexander Swan, 2d, appearing by Eugene L. Wolver, Esq., to oppose said motions at said hearings; evidence having been presented by such written affidavits and exhibits in support of and also in opposition to said motions, and written points and authori-

ties and memorandum-briefs both in support of and in opposition to said motions, and oral argument fully presented on said matters, and the Court, being fully advised in the premises and having prepared and filed its Memorandum Decision under date of October 30, 1953, now makes disposition of said matters as follows:

It Is Hereby Ordered and Adjudged:

1. That motion to dismiss the action as to each defendant on the ground that the court is without jurisdiction because of failure of plaintiff to show diversity of citizenship be and hereby is denied.

2. That motion to dismiss the action for lack of jurisdiction over the person of each said named party defendant on the grounds [473] (a) that none of them is a legal entity with capacity to be sued in California on the purported cause of action set forth in plaintiff's second amended complaint, and (b) that none of them is amenable to process within the State of California, viz., is not doing business in California, be and hereby is denied on each said grounds.

3. That motion to quash service of process upon said defendant on the ground that said process is insufficient and that the purported substituted service of process on the California Secretary of State is neither authorized nor valid in the type of action alleged in said second amended complaint be and hereby is denied.

4. That motion to dismiss the first and second

counts of said second amended complaint on the ground that the court lacks jurisdiction of the subject matter alleged therein be and hereby is denied, but said motion to dismiss said first and second counts on the ground that each fails to state a claim for which relief can be granted be and hereby is granted and each of said first and second counts be and hereby is dismissed with prejudice to the commencement of another action.

5. That motion to dismiss the third count of said second amended complaint on the ground that it fails to state a claim for which relief can be granted should be and is herein treated as a motion for summary judgment for the reason that matters outside the pleading (consisting of said affidavits and exhibits) have been considered by the court; that, in connection with treating said motion as a motion for summary judgment, the court makes and enters its Findings of Fact as follows:

(a) That defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, was organized and functions solely to foster, maintain, control, and promote the teaching, practice, and dissemination of the religion known as Christian Science, which is a religion predicated upon the Bible and founded and organized by Mary Baker Eddy. [474]

(b) That defendant, The Christian Science Board of Directors, is a self-perpetuating group of five individual trustees first created in the founding deed of trust executed by Mary Baker Eddy under

date of September 1, 1892; that said group constitutes the executive officers of The First Church of Christ, Scientist, in Boston, Massachusetts, and exclusively manage, determine the ecclesiastical polity, and direct all other affairs of said church according to its bylaws set forth in the Manual of The Mother Church, aforesaid, The First Church of Christ, Scientist, in Boston, Massachusetts.

(c) That defendant, The Christian Science Publishing Society, is the name of a publishing trusteeship created by deed of trust executed under date of January 25, 1898, by Mary Baker Eddy, and is operated by a group of three individual trustees as a wholly religious activity solely of and for said defendant church, and solely for the promotion and extension of the religion of Christian Science as taught by Mary Baker Eddy; that only said Publishing Society selects, approves, and publishes the books and literature it sends forth.

(d) That, on or about March 5, 1930, plaintiff applied for membership in the defendant, The First Church of Christ, Scientist, in Boston, Massachusetts, and, on or about April 30, 1930, he was admitted as a member in good standing, and ever since said date plaintiff has been and now is a member of said Church; that, on or about September 15, 1934, plaintiff was approved and accepted by said defendant Church and its managing officers, the defendant The Christian Science Board of Directors, for listing and advertisement as a Christian Science practitioner in The Christian Science Jour-

nal; that, from and after said 15th day of September, 1934, until on or about October 17, 1949, plaintiff paid defendant The Christian Science Publishing Society its annual advertising fee and charge for [475] inserting and listing his name, address, and telephone number in the monthly editions of The Christian Science Journal under the classified caption of "Christian Science Practitioners and Teachers"; that, on or about September 12, 1949, plaintiff voluntarily requested removal of his name temporarily from said listing for the purpose of enabling him to pursue and engage in further study and research in the field of Christian Science and to do expository writing pertaining to metaphysics, all of which plaintiff pursued until on or about May 10, 1951; that, on or about said 10th day of May, 1951, plaintiff made written application for resumption of the publication and reinsertion of his name, address, and telephone number under said classified caption in said The Christian Science Journal, but that, ever since said date, defendants have failed and refused to resume said publication or reinsertion.

(e) That, during the said period commencing on or about October 17, 1949, and terminating on or about May 10, 1951, plaintiff wrote and caused to be published a book entitled "God on Main Street"; that plaintiff's said book, as described by plaintiff, is "an explanation and dissertation of, on and concerning the beliefs and teachings of Christian Science."

(f) That, on or about July 21, 1950, plaintiff completed the manuscript for said book and advised defendants thereof, and offered and tendered to said defendants a copy thereof, but that defendants refused, failed and neglected to receive, accept, or examine such manuscript, and did not communicate with or advise plaintiff concerning said book or the publication thereof.

(g) That, during the month of February, 1951, plaintiff caused said book to be published independently of defendants, and transmitted a published copy to defendants.

(h) That plaintiff has alleged, on information and belief, that “defendants * * * conspired * * * to hinder, delay and deny circulation of said book * * * amongst the member of the Christian [476] Science faith and among members of the public generally” and “have impugned (sic) and vilified (sic) * * * the character, motives, ethical and professional standing of plaintiff in a manner * * * intended to injure, diminish, harm and destroy the value and status of such book”; that plaintiff has further so alleged, on information and belief, that said defendants “notified * * * branch churches, reading rooms (and) book stores * * * (not to) * * * sell or distribute * * * said book” and that, if they did so, “defendants would thereafter * * * refuse * * * to subsequently furnish them with * * * literature * * * and books” published by defendant Publishing Society; that, for the purpose of this motion, such allegations must be treated as true.

(i) That it is true, as plaintiff alleges, that “the ‘Manual of The Mother Church—The First Church of Christ, Scientist, in Boston, Massachusetts, (by) Mary Baker Eddy,’ has been and now is the official Bylaws of said (named) defendants”; that said bylaws governing defendants provide that “only the (said) Publishing Society of (said) The Mother Church selects, approves, and publishes the books and literature it sends forth” and “the literature sold or exhibited in the Reading Rooms of Christian Science Churches shall consist only of * * * writings * * * by Mary Baker Eddy * * * (and) also the literature published or sold by The Christian Science Publishing Society”; that it is true, as plaintiff alleges, “that said reading rooms purchase all of their reading materials, of all types and descriptions, exclusively from said defendant, The Christian Science Publishing Society.”

(j) That also, under the ecclesiastical polity of said The Mother Church and under said bylaws governing defendants and all members of said The Mother Church, including plaintiff as a member thereof, and as set forth in said Manual, no member of said The Mother Church shall “buy, sell, nor circulate Christian Science literature which is not correct in its statement of the divine Principle and rules * * * of Christian Science”; and “a member of * * * (said) [477] Church shall not patronize a publishing house or bookstore that has for sale obnoxious books.”

(k) That defendants refused advertising matter

concerning said book tendered to The Christian Science Monitor, an international daily newspaper published by said Publishing Society.

(1) That said third count of second amended complaint presents no genuine issue as to any material fact between plaintiff and any of said defendants, and that each of said defendants is entitled to a judgment as a matter of law.

Therefore, It Is Hereby Ordered, Adjudged, and Decreed: That said motion to dismiss the third count of second amended complaint (on the ground that it fails to state a claim for which relief can be granted) treated as a motion for summary judgment be, and hereby is, granted as to each of said named defendants, and said third count of said second amended complaint be, and it hereby is, dismissed as to each of said named defendants with prejudice to the commencement of another action and that plaintiff take nothing as to said third count.

Dated: November 23, 1953.

/s/ JAMES M. CARTER,
United States District Judge.

Affidavit of service attached.

Lodged November 10, 1953.

[Endorsed]: Filed November 23, 1953.

Docketed and entered November 23, 1953. [478]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Edmund L. Smith, Clerk of the Above-Entitled Court, and to the Defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, also known as The Church of Christ (Scientist), a juridical entity recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts; The Christian Science Board of Directors, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts, and The Christian Science Publishing Society, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts, and to Lindstrom and Bartlett, their attorneys of record.

You and Each of You Will Please Take Notice, that the above-named plaintiff, Alexander Swan, 2d, does hereby appeal to the United [480] States Court of Appeals for the Ninth Circuit, from those judgments and orders entered against said plaintiff and in favor of the defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, also known as The Church of Christ (Scientist); The Christian Science Board of Directors, and The Christian Science Publishing Society, in the above-entitled cause on the 23rd day of Novem-

ber, 1953, the within appeal being as to that part thereof, wherein and whereby said defendants' motion to dismiss the first and second counts of plaintiff's Second Amended Complaint on the ground that each fails to state a claim for which relief can be granted, was granted, and from the dismissal with prejudice of said first and second counts of said Second Amended Complaint, and from the Summary Judgment in favor of said defendants and against plaintiff as to the third count of said Second Amended Complaint.

Dated this 3rd day of December, 1953.

/s/ EUGENE L. WOLVER,
Attorney for Plaintiff.

[Endorsed]: Filed December 3, 1953. [481]

[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED
UPON, ON APPEAL

(Rule 75(d), Rules of Civil Procedure.)

To Edmund L. Smith, Clerk of the Above-Entitled Court, and to the Defendants, The First Church of Christ, Scientist, in Boston, Massachusetts, also known as The Church of Christ (Scientist), a juridical entity recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts; The Christian Science Board of Di-

rectors, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts, and The Christian Science Publishing Society, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts, and to Lindstrom and Bartlett, their attorneys of record.

Pursuant to Rule 75(d) of the Rules of Civil Procedure, Alexander Swan, 2d, as plaintiff and appellant, hereby designates [482] the points upon which he intends to rely upon the appeal, as follows:

(1) That the First Count of plaintiff's Second Amended Complaint states a claim upon which relief can be granted;

(2) That the Second Count of plaintiff's Second Amended Complaint states a claim upon which relief can be granted;

(3) That it was prejudicial error for the court to dismiss with prejudice, the First Count of plaintiff's Second Amended Complaint;

(4) That it was prejudicial error for the court to dismiss with prejudice, the Second Count of plaintiff's Second Amended Complaint;

(5) That the affidavits upon which the court granted summary judgment in favor of the defendants and against the plaintiff as to the Third Count of plaintiff's Second Amended Complaint, do not

comply with Rule 56 and particularly sub-paragraph (e) of Rules of Civil Procedure;

(6) That the facts as indicated upon the pleadings and upon the affidavits relied upon by the court in granting such summary judgment are insufficient to support the judgment and rulings of the court in granting summary judgment as to the Third Count of plaintiff's Second Amended Complaint; and

(7) That the court committed prejudicial error in granting the summary judgment in favor of the defendants and against plaintiff as to the Third Count of plaintiff's Second Amended Complaint.

Dated this 10th day of December, 1953.

/s/ EUGENE L. WOLVER,
Attorney for Plaintiff and
Appellant.

Affidavit of service attached.

[Endorsed]: Filed December 10, 1953. [483]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 492, inclusive, contain the original Findings of Fact and Order re Motion to Dismiss

Amended Complaint or in Lieu Thereof to Quash Service of Summons Thereon; Second Amended Complaint, Equitable Relief and Damages; Alias Summons on Second Amended Complaint with Return of Service; Affidavit of Alexander Swan, 2d, Pursuant to Rule 4(d)(7) Federal Rules of Civil Procedure, etc.; Order Pursuant to Rule 4(d)(7) Federal Rules of Civil Procedure, etc.; Notice of Motions to Dismiss Second Amended Complaint, or in lieu thereof to Quash Service of Process Thereupon; Separate Affidavits of Walter A. Dane, John H. Hoagland, Arthur W. Eckman, Clayton B. Craig, Alexander Swan, 2d; John H. Hoagland, Alfred Pittman and Roy Garrett Watson; Notice of Motion to Dismiss or in Lieu Thereof to Quash the Service of Summons with Affidavits of Leonard T. Carney and Kimmis Hendrick; Separate Affidavits of Gordon V. Comer, Elizabeth McArthur Thomson, Alexander Swan, 2d, and Supplement Thereto; George Wendell Adams, Arthur W. Eckman, Hazel A. Firth, Gordon V. Comer and Elizabeth McArthur Thomson; Memorandum Decision; Orders re Motions to Dismiss and to Quash Service of Process Together with Findings of Fact and Judgments on Second Amended Complaint; Notice of Appeal; Statement of Points to Be Relied Upon on Appeal; and Appellant's and Appellees' Designation of Record on Appeal which constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and

certifying the foregoing record amount to \$8.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 8th day of January, A.D. 1954.

[Seal]

EDMUND L. SMITH,
Clerk;

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14,195. United States Court of Appeals for the Ninth Circuit. Alexander Swan, 2d, Appellant, vs. The First Church of Christ, Scientist, in Boston, Massachusetts, also known as the Church of Christ (Scientist), a corporation; The Christian Science Board of Directors, and the Christian Science Publishing Society, a corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed January 9, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14,195

ALEXANDER SWAN, 2d,

Appellant,

vs.

THE FIRST CHURCH OF CHRIST, SCIEN-
TIST, IN BOSTON, MASSACHUSETTS,
etc., et al.,

Appellees.

STATEMENT OF POINTS TO BE RELIED
UPON, ON APPEAL

(Rule 17, Paragraph 6, of the Above-Entitled
Court's Rules)

To Paul P. O'Brien, Clerk of the Above-Entitled Court, and to Appellees, The First Church of Christ, Scientist, in Boston, Massachusetts, also known as The Church of Christ (Scientist), a juridical entity recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts; The Christian Science Board of Directors, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws of the Commonwealth of Massachusetts, and The Christian Science Publishing Society, a juridical entity, recognized and regarded as such, and as a body corporate, under the laws

of the Commonwealth of Massachusetts, and to Lindstrom and Bartlett, their attorneys of record.

Pursuant to Rule 17, Paragraph 6 of the Rules of this Honorable Court, Alexander Swan, 2d, as appellant, hereby designates the points upon which he intends to rely upon the appeal, as follows:

1. That the First Count of Appellant's Second Amended Complaint states a claim upon which relief can be granted;

2. That the Second Count of Appellant's Second Amended Complaint states a claim upon which relief can be granted;

3. That it was prejudicial error for the court to dismiss with prejudice, the First Count of Appellant's Second Amended Complaint;

4. That it was prejudicial error for the court to dismiss with prejudice, the Second Count of Appellant's Second Amended Complaint;

5. That the affidavits upon which the court granted summary judgment in favor of the appellees and against the appellant as to the Third Count of Appellant's Second Amended Complaint, do not comply with Rule 56, and particularly sub-paragraph (e) of Rules of Civil Procedure;

6. That the facts as indicated upon the pleadings and upon the affidavits relied upon by the court in granting such summary judgment, are insufficient to support the judgment and rulings of

the court in granting summary judgment as to the Third Count of Appellant's Second Amended Complaint;

7. That the court committed prejudicial error in granting the summary judgment in favor of the appellees and against appellant as to the Third Count of Appellant's Second Amended Complaint.

Dated this 11th day of January, 1954.

/s/ EUGENE L. WOLVER,
Attorney for Appellant.

[Endorsed]: Filed January 12, 1954.

[Title of Court of Appeals and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed, by and between appellant and appellees, through their respective counsel, that (1) the "Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts," eighty-ninth edition, being Exhibit "A" annexed to the affidavit of Gordon V. Comer, consisting of pages 171 through 312 of the certified record filed herein; and (2) the "Catalogue of The Christian Science Publishing Society," May, 1953, edition, as annexed Exhibit "B" to the affidavit of John H. Hoagland, consisting of pages 108 through 132 of the certified record filed herein, shall not be printed as part of the record on appeal, but that, in lieu thereof, appellant

shall furnish to the clerk of the above-entitled court the required number of printed books described in (1) above, and appellees shall furnish to counsel for appellant and to the clerk of the above-entitled court the required number of printed books described in (2) above, and the same shall become a part of the record on appeal herein.

Dated: January 15, 1954.

/s/ EUGENE L. WOLVER,
Attorney for Appellant.

LINDSTROM and BARTLETT,
By /s/ HARRIS ROBISON,
Attorneys for Appellees.

[Endorsed]: Filed January 20, 1954.

